PARL. PAPERS
FOR REFERENCE ONLY.

# FIRST REPORT

OF THE

# COMMISSIONERS

APPOINTED TO INQUIRE INTO

# THE STATE OF THE CRIMINAL LAW IN THE CHANNEL ISLANDS.

---

# JERSEY.

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Presented to both Houses of Parliament by Command of Her Majesty.

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## COMMISSION.

VICTORIA by the grace of God of the United Kingdom of Great Britain and Ireland QUEEN Defender of the Faith. To Our trusty and well beloved THOMAS FLOWER ELLIS Esquire Barrister at Law and THOMAS BROS Esquire Barrister at Law Greeting:

WHEREAS We have deemed it expedient for divers good reasons and considerations that a Commission should forthwith issue for enquiring into the Criminal Laws now in force in Our Channel Islands and into the constitutions and powers of the Tribunals and Authorities charged with the execution of such Laws. Now KNOW YE that We having especial trust and confidence in your wisdom and fidelity have assigned nominated and appointed and do by these presents assign nominate and appoint you the said THOMAS FLOWER ELLIS and THOMAS BROS to be Our Commissioners to go into our said Islands for the purposes aforesaid. And for the better effecting the purposes of this Our Commission, We do by these presents give and grant to you or any one of you full power and authority to call before you or any one of you such persons as you shall judge necessary by whom you may be the better informed on the subject of this Our Commission and of every matter connected therewith. And also to call for have access to and examine all such Official Books Documents Papers and Records as may afford the fullest information on the subject, and to enquire of and concerning the premises by all other lawful ways and means whatsoever. And We do hereby give and grant to you or any one of you full power and authority where the same shall appear to be requisite to administer an Oath or Oaths to any person or persons whatsoever to be examined before you or any one of you touching or concerning the premises. And Our further will and pleasure is, that you do and shall with as little delay as possible report to Us in Our Privy Council under your hands and seals respectively your several Proceedings by virtue of this Our Commission as the same shall be respectively completed and perfected. And We will and command and by these presents ordain that this Our Commission shall continue in full force and virtue and that you Our said Commissioners or any one of you may from time to time proceed in the execution thereof and of every matter and thing therein contained although the same be not continued from time to time by adjournment. And we do hereby require all and every Our Officers and Ministers in our said Islands respectively to be aiding and assisting to you and each of you in the due execution of this Our Commission. And we have made choice of Our trusty and well-beloved CHARLES CLARK Esquire Barrister at Law to be Secretary to this Our Commission and to attend you in the execution thereof whose service and assistance we require you to use from time to time as occasion may require. In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster. the Sixteenth day of May in the ninth year of our Reign.

By Writ of Privy Seal,

EDMUNDS.

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# FIRST REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

REPORT.

Your Majesty having been pleased to direct a Commission to us, who have hereunto subscribed our names and affixed our seals, nominating and appointing us to be Your Majesty's Commissioners to go into Your Majesty's Channel Islands, for the purpose of inquiring into the Criminal Laws now in force there, and into the constitutions and powers of the Tribunals and Authorities charged with the execution of such laws, and declaring it to be Your Majesty's further will and pleasure that we should, with as little delay as possible, report to Your Majesty in Your Privy Council, under our hands and seals respectively, our several proceedings by virtue of the said Commission, as the same should be respectively completed and perfected:—

We humbly report to Your Majesty that, upon receiving the Commission, we proceeded immediately with the inquiry with which Your Majesty was pleased to charge us; and that we have, to the best of our power, employed ourselves in arranging the materials which we have collected, and in forming our judgment as to the result.

We propose, at present, to lay before Your Majesty only so much as relates to the Island of Jersey. By this means we shall be enabled to submit, without further delay, what we believe to be quite sufficient to enable Your Majesty to take into consideration the measures, if any, fit to be adopted with respect to the Criminal Law of that Island. We believe that such measures may be discussed and determined upon quite independently of any matters, present or prospective, touching Guernsey and its dependencies. For, although the origin of the institutions of all the Channel Islands is historically one, the institutions themselves differ most widely. For instance, in Jersey trial by jury prevails in criminal cases, and its value is highly appreciated; in Guernsey it does not exist, and is looked upon with dislike and suspicion. In Jersey, the judicial and legislative powers are, to a great extent, separate; in Guernsey, they are almost completely blended together. Many other differences affecting, not simply the accidental details, but the very essence of the legal institutions might be pointed out. To this we may add that the Islands are very differently circumstanced as to the state of their political intelligence and knowledge, that the population in the two is very differently constituted, and that the feelings and wishes which they entertain as to their legal systems point continually in opposite directions. The intercourse between Jersey and Guernsey is, we believe, very much less than that between either and Great Britain. We see, on the whole, no reason for expecting that it will be found advisable to apply the same measures to the two; certainly not so as to detail, and, as we further believe, not as to principle.

The fact that Your Majesty had charged us with this inquiry became known in Jersey very shortly after the Commission issued. Two legal functionaries of the Island, the Bailiff and the Procureur Général, in consequence, honoured us with an interview in London, and pointed out to us several sources of information. We were thus enabled early to acquire some acquaintance with written works containing accounts, more or less minute, of many of the particulars into which we were to inquire; and we also had the great advantage of learning the names and addresses of persons capable of supplying us with valuable evidence. We then framed three series of written questions, for the purpose of obtaining, before we should visit Jersey, as much general knowledge of the criminal law as might prepare us for conducting an oral inquiry into details. The questions in the first series were directed to the general nature of the jurisdiction of the tribunals administering the Criminal Law of Jersey, the fundamental principles of the system of that law, and the course of practice; the second, to the general principles of personal responsibility, separate or joint; the third, to the general principles of evidence. These questions we addressed

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to the Bailiff, the members of the Bench, the legal functionaries of the Criminal Court, and the Bar. Answers were transmitted to us, prepared, in many instances, with an assiduity and fairness which we cannot too strongly acknowledge; and we found the advantage of having taken this step in the first instance much greater than we had anticipated.

We visited Jersey at the end of August, 1846. Immediately on our arrival, we were made acquainted with the course adopted on former occasions of Commissioners having been appointed by the Crown for Jersey; and we learned that the Commissions had been read to the States and there registered, and that their object and nature had been explained to the States by the Commissioners. We, therefore, in concert with the Bailiff, took steps for having this done; and, accordingly, the States, upon Your Majesty's Commission having been read, ordered it to be registered; and we then shortly pointed out to the States our view of the duty with which we were charged, and the course which we intended to pursue.

We proposed to conduct the oral examination in public, reserving to ourselves the power, should that appear to us necessary at any part of the inquiry, to exclude all but the parties under examination; but we found no occasion to act upon this reservation. We requested the Bailiff, the members and officers of the Royal Court, the Crown lawyers, and the members of the Bar, to attend as constantly as possible at these examinations; and we explained that we should examine different witnesses separately and successively, and that we desired that those who should be present would state, during the course or at the close of each such examination, any matters which they could supply, contradicting, modifying or illustrating the evidence given. During the examinations which ensued, the Bailiff was almost constantly present; some of the other members of the Bench also generally attended; and the law officers of the Crown and the members of the Bar gave attendance and supplied information with an alacrity and industry which, especially when we consider the continued professional calls made upon their time, we beg leave to point out to Your Majesty as a proof of their great anxiety to further the execution of Your Majesty's gracious purpose in issuing the Commission. It is to this circumstance that we are bound principally to attribute whatever approach we may have made to a satisfactory performance of the task imposed upon us.

In some instances also we derived valuable assistance from the suggestions of non-professional persons who had been led to take an interest in the subject of the Criminal Law of the Island.

We had announced that we should be ready to receive communications from any persons who would point out either proper subjects of inquiry, or important evidence. We expressed, at the same time, our wish that no evidence should be offered tending merely to throw blame on individuals without illustrating the system itself. We found it, as might be expected, not easy to confine the evidence within this proposed limit. As soon as any part of the system appeared likely, in itself, to produce evil effects, the question necessarily arose, whether it had done so in fact. This could scarcely ever be answered without bringing forward the conduct of individuals; so that the evidence was continually liable to take the form of personal attack and defence. The difficulty was the more to be regretted, because, in Jersey, the most conflicting opinions on many points of the institutions are strongly entertained and warmly expressed, and because a very vehement and active party feeling exists, manifesting itself upon almost every subject of public interest. This state of things has, no doubt, coloured the evidence which was given to us, and has made it necessary to exercise much caution in using the materials placed in our hands.

We found, also, very great difficulty in making it understood that we were not charged to redress individual grievances, nor even to inquire into them in any cases where the inquiry would not lead to some result connected with the general system. We refused numerous applications upon this principle. Another class of applications, which we refused, related to subjects upon which we conceived that our commission did not authorize us to enter. For instance, we declined entering into questions relating merely to civil injuries, to the proceedings of the Ecclesiastical Courts, to the law of marriage, to commitment for contempt by a court acting as a civil tribunal.

We also, after the evidence had gone so far upon a subject as to authorize us, in our opinion, to form a decided judgment, declined receiving further

evidence confirming our views, leaving ourselves open only to receiving evidence opposed to the result at which we had arrived.

We thought it important, before inquiring orally into other details, to make ourselves as far as possible familiar with the form in which the records of the criminal proceedings are made up. We therefore examined, in the first instance, the written Acts with the assistance of the Greffier and Commis au Greffe: both of these gentlemen afforded us very important assistance at this and other stages of our inquiry. Much information in this department was also supplied to us, in the course of the investigation, by the Viscount of the Island, who attended the examinations very constantly, and has devoted much attention to the history of the Law of Jersey.

We occasionally attended the Court in which criminal proceedings were going on, for the purpose of facilitating our understanding of the evidence given before us.

In conducting the oral examination, it did not appear to us requisite to administer any oath.

Having explained generally the course which we pursued for the purpose of obtaining information, we have now to lay before Your Majesty our views as to the present state of the Criminal Law in Jersey and the Tribunals and Authorities charged with its execution, and our opinion as to the efficiency of the present system, and as to such alterations as it may be expedient to make. It is impossible to conceal from ourselves that our judgment must be seriously affected by our previous habits as English lawyers. We have earnestly endeavoured to divest our minds of the prejudices incidental to a long familiarity with one particular system of law; but we cannot hope that we have altogether succeeded. We are, therefore, bound humbly to point out to Your Majesty that our opinions must frequently have been influenced by our own professional education, and that the views which we have adopted cannot be safely received without taking into consideration the point from which we have looked.

The Criminal Law of Jersey is derived from five sources. These are: first, the Customary Law; secondly, the Charters; thirdly, the Orders of the Sovereign in Council; fourthly, the Ordinances of the Local Legislature; fifthly, certain Statutes of the Realm.

The Customary Law originates in the ancient Norman institutions. The Island, as well as Guernsey and its dependencies, formed part of the Duchy of Normandy down to the reign of King John of England. When the continental part of the Duchy was conquered by the French King, Philip Augustus, about 1205, A.D., the sovereigns of England retained the Channel Islands. Theoretically, it would follow that whatever was law at the time of the separation is law still, unless it has been abrogated or modified by Charter, Order in Privy Council, Ordinance of the Local Legislature, or Statute. And, similarly, it is supposed that no law can in theory exist which was not then existing, unless it has been established by one of these four.

The principal authority as to the ancient customary law of Normandy is *Le Grand Coustumier du pays et duche de Normandie.* According to Sir Edward Coke (Preface to Inst. 2.), this work is compounded of some English laws given by Edward the Confessor, and of divers customs of the Duchy of Normandy. Coke appears to have taken this opinion from Rouillé of Alençon, who, in his prefatory comment on the Grand Coustumier, entitled Northmannorum Origo, speaks of Edward as "hujusce Normanicæ consuetudinis latorem sive datorem." Basnage dissents from this. Sir Edward Coke assigns the compilation of the work to the time of Henry III. of England, and places it about forty years after the coronation of Richard the First of England, that is, about 1229. For this he refers to certain passages in the Coustumier itself, and the Comment. The passages referred to seem not to prove more than that the compilation must not be dated earlier than the time of Richard I. But his date does not differ much from that given at the commencement of *Le stille de proceder en pays de Normendie*, which seems to be itself a commentary upon an Ordinance of the Parliament of Normandy, dated 21st January, 1515, and which probably was composed about 1539. This account is as follows: "Premieremēt est assauoir que en ce pays & duche de Normendie sont aulcunes

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loyx coustumes establissementz q̄ sont cōtenus au liure cōmunement nōme le coustumier de Normēdie & ainsi appelle. Lesquelles loyx & mesmes iceulx establissementz et coustumes sont tenues pour loyx aud' pays. Et y sont et ont este obseruez, tenuz, et gardez de toute anciennete, et au deuant q̄ lad' duche fust baillee p' le roy Charles le simple au duc Rou. Et depuis que le roy de Frāce Philippe auguste eust retire & mis dehors des mains des angloys lad' duche il se voulut enquerir des loyx & coustumes dudict pays et fit escrivre & mettre en pl' belle ordre ledict liure coustumier q̄l nestoit eu precedent. Tint et assembla cōseil ou furent les prelatz seigneurs barons du pays, par le conseil desquelz il auctorisa de rechief lesdictes loyx & coustumes ainsi ql appert assez p' vng chapitre dudict coustumier ou est contenu le conseil du roy Philippe" (whom Rouillé, in his commentary on ch. 110, considers to be Philippe le Hardi; which is manifestly a gross blunder) "quil tint a lislebōne: & est ledict chapitre en iceluy liure sur le pas ou il traicte de bref de patronnage deglise." This Council, however, contains merely regulations as to the trial of the right of ecclesiastical patronage in certain cases.

It is quite clear that the work, in its present form, belongs to some time later than that of St. Louis, who is mentioned in chapter 6: and we may perhaps place it at about the end of the thirteenth century, that is, from fifty to a hundred years after the separation. It contains the ancient Law and Custom of the Duchy, intermixed with ordinances (établissemens) of French monarchs down to the time of St. Louis.

A Latin Commentary on the Grand Coustumier was composed by Rouillé of Alençon, in the year 1533. This is annexed to the text in the edition to which we shall refer in this Report, that of 1539. There is also annexed a French Gloss, some parts of which seem to be of much greater antiquity than Rouillé's Latin Commentary; but, in its present shape, it appears to be a collection or amalgamation of glosses, brought down to the time of the edition of 1539. Other supplemental treatises and documents are added, comprising the Charter of Louis Hutin, called *La Chartre aux Normans*, Ordinances of the Court of Exchequer at Rouen, and of French kings down to the time of Francis the First, as well the Stille de proceder, of which we have already spoken. The whole collection, ncluding text and comments, is often simply cited under the name of Rouillé.

In the time of the reign of Queen Elizabeth of England, was published a posthumous work of Terrien, Lieutenant Bailiff of Dieppe. This work is entitled *Commentaires dv Droict Civil, tant pvblic qve privé, obserué au Pays & Duché de Normandie.* The Norman law is here professedly brought down to the time of the work. The several chapters of the Grand Coustumier which it contains are rearranged, and form a very small part of the whole. The treatise enjoys a high reputation among the lawyers of Jersey, for which we find it difficult to account. The intention of the author seems to have been to arrange and expound the Law of Normandy according to the system of the Civil Law; a design, as we think, ill conceived and ill executed. The treatise appears to us to be utterly vague and unsatisfactory, and to possess scarcely any of the requisites essential to a legal authority. Whichever be the correct estimate of the merits of this work, it can be of but little value for the purposes of the law of Jersey; inasmuch as it is, to a very great extent, made up of law which has been engrafted upon the Norman institutions since the separation, and which, therefore, is properly of no authority in Jersey. In Guernsey, indeed, it has, as we shall shew in our Report upon the Criminal Law of that Island, received a very remarkable recognition in the reign of Queen Elizabeth. But in Jersey it can be used, so far as we can judge, for little else than the occasional explanation which it furnishes of the old law as existing at the time of the separation.

These are the works principally referred to for the ancient customary law: but occasionally others are cited, which are either treatises on the Norman institutions generally, or on particular branches of them, or comments upon the customs of other parts of France, or legal works incidentally discussing points arising on the Norman Law. These we do not think it necessary to particularize.

The precedents of the Court are, of course, cited as authority for the customary law. A fire consumed all the Records in 1503. There are a few remaining, as old as 1504; but a nearly regular series commences at 1524. Since 1797, the Criminal Records have been kept apart from the rest. No authorized publication of them exists: nor is it probable that the demand for

such a work would ever be sufficient to meet the expense of publication. Nor, as the Criminal Court is now constituted, does it appear likely that the decisions, if regularly made public, would be treated with the same deference as that which is shown in England to the published reports of the cases in Westminster Hall. The lawyers of Jersey do not quite agree in their estimate of the precise value which is to be attributed to a precedent: but, upon any view, it falls much short of that which English lawyers ascribe to a decision of their own courts. The recorded Acts of the Court are accessible to the legal profession; but they, of course, do not show the arguments urged, nor, save to a very slight degree, the grounds of the decisions. And, as they are neither digested nor indexed, the Judges and advocates have only their own recollection (or, in some few cases, manuscript memoranda of others) to guide them in the search.

The only Charter which has had much effect upon the Criminal Law of Jersey is that called the Constitutions of King John. In a note at page 223 of Durell's edition, published in 1837, of Falle's History of Jersey (of which the last edition published in the author's lifetime is dated 1734), it is said that an ancient copy of these Constitutions exists in the Tally Office in the Exchequer. We have caused inquiries to be made for it there; but it has long been missing. We take the document as printed in Falle. It is entitled "Inquisitio facta de servitiis consuetudinibus et libertatibus, Insul. de Gerese et Guernese, et legibus constitutis in Insulis per Dominum Johannem Regem, per sacramentum" &c., "qui dicunt," &c. Then follows the title, "Constitutiones et provisiones constitutæ per Dominum Johannem Regem, postquam Normannia alienata fuit." The common tradition agrees with the latter title. It is believed that, after Philip Augustus had conquered the continental part of the Duchy, King John of England bestowed these Constitutions upon the Island as a reward for their adhesion to himself. Some doubt has been entertained by antiquarians as to this tradition; but, on the whole, we think the probability is in favour of its truth. We do not, however, consider it necessary to discuss this question, as it is agreed that, whatever the origin of these Constitutions, they have for many ages been treated as a Charter granted by the Sovereign and accepted by the inhabitants. The present Royal Court is mainly founded upon these Constitutions, as we shall hereafter explain; but it will be found that several of the features of the judicial organization there established have disappeared.

By the Norman Law, the Duke had supreme legislative power. The form, which this authority now assumes, is that of Orders of Your Majesty in Privy Council: and this has been the course for several centuries. The Orders in Privy Council are registered by the Royal Court, and are not binding as law until such registration has taken place. This is so settled by an article in the Code of 1771, to which we shall advert subsequently. The Orders in Council always now contain a specific command that they shall be registered. It is, however, declared by the same Code that it is competent to the Royal Court, in any case where the Order appears to be contrary to the charters and privileges of the Island, or burthensome (onéreux), to suspend the registration until the pleasure of the Crown be further taken; though, if the Crown does not withdraw the Order, it must be registered.

These Orders in Council, in many instances, merely determine questions incidentally arising from time to time, and of only temporary interest. But, in other instances, they are of more general importance, especially when they contain a recognition and sanction of Acts of the local legislature, or of Reports and recommendations issuing from Commissioners.

The local Legislation is vested in the States.

This body is presided over by the principal civil officer of the Island, called the Bailli, or Bailiff, who is appointed by Your Majesty, and holds office during Your Majesty's pleasure. The States comprehend also thirty six members, namely, twelve jurats, twelve rectors of parishes, and twelve constables of parishes, or occasionally, in lieu of these last, the centeniers of parishes when the constable is necessarily absent, or his office vacant.

It is necessary, for the purpose of explaining the constitution of the States, to describe the parochial system in Jersey.

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There are twelve parishes in Jersey. Each of them has its own Parochial Assembly, resembling, in many respects, an English vestry. It consists of the constable of the parish, and the centeniers (subordinate officers of police), the rector of the parish (or, in his illness, the vicar), and the principaux, which name designates those who are rated at a certain amount. The amount varies in the different parishes; the highest qualifying rate is 20 quarters of wheat, the lowest is 8. The quarter of wheat is here used merely as a name for a particular sum of money, and does not vary with the price of wheat: its value is fixed by an express law of 1833, which declares that an annual income of a quarter of wheat shall be estimated to represent a capital (in argent d'ordre) of 333 liv. 6 sous. 8 den., or rather more than 20*l.* English. Besides these, the following are ex officio members of the Assembly of the parish in which they reside: the Jurats, the two law officers of the Crown, namely, the Procureur Général and Avocat de la Reine, two functionaries of the Royal Court, namely, the Vicomte and Greffier, and certain parochial functionaries, namely, the Procureur du Bien Publique, the two Churchwardens (surveillans), the two Collectors of alms (collecteurs d'aumônes), and all who have in that parish served the office of constable or centenier, so long as they reside in the parish. The police officers of a lower rank, namely the vingteniers and the officiers du connétable, are also members of the Parochial Assembly, but do not, as the constables and centeniers do, continue so when out of office.

This Assembly makes the rate, subject to an appeal, by a party rated, or omitted from the rate, under certain circumstances, to the Royal Court. Every person possessing an annual income of two quarters, answering to a capital of rather more than 40*l.* sterling, is liable to be rated.

There are twelve Jurats (Jurés Justiciers) for the whole Island. They hold office for life. On a vacancy, the successor is appointed by the votes of all the rate-payers of the Island, there being no appropriation of any Jurat to a particular parish.

The rectors of the parishes are appointed by the Crown for life.

The constables and centeniers are appointed, for three years, by the votes of all the rate-payers of the particular parish. The vingteniers and the officiers du connétable are elected for the particular parish by the Parochial Assembly. They hold office for seven years in all the parishes except St. Hélier's, which contains the principal town of the Island; in that parish they are elected for four years only. The number of the officers is: for each parish 1 constable; 4 centeniers for St. Helier's, and 2 for each of the other parishes; from 7 to 2 vingteniers for each parish; 24 officiers du connétable for St. Hélier's, 15 for St. Brélade, and 12 for each of the other parishes.

The Procureur Général and the Avocat de la Reine are appointed by Your Majesty, and hold for life.

The Vicomte is appointed by Your Majesty, and holds during pleasure.

The Greffier is appointed by the Bailiff, and holds for life.

The Procureur du Bien Publique is appointed by the Parochial Assembly for three years.

The two Churchwardens are chosen annually, one by the minister, and one by the parishioners.

The two Collectors of alms are chosen in the same way.

We shall hereafter have occasion to remark on the constitution of the Parochial Assembly; but we have described it in this place, because, as has been shewn, twenty four of the thirty six members of the States are elected by the rate-payers, and the rate depends upon the Parochial Assembly.

Besides the Bailiff and the thirty six members of the States already mentioned, the Procureur Général and the Avocat de la Reine have seats in the Assembly of the States, and a right of debate, but no right of voting. The Vicomte has also a seat, but no right of speech or vote.

One portion of the States, namely, the Bailiff and the twelve Jurats, constitutes the Royal Court, which is the only criminal tribunal in the Island. We shall speak more fully of this Court at a later part of the present Report.

We do not think it necessary, for the purpose of this Commission, to enter minutely into the details of the process of debate and enactment in the States. It seems here only essential to report that the States have the power of passing laws which, as declared by the Order of Council in 1771, to be presently mentioned, are in force for three years. They cannot, however, become law if nega-

tived by the Governor or (in his absence) the Lieutenant Governor, officers appointed by Your Majesty to hold during pleasure. Occasionally, Ordinances of the States are renewed from three years to three years, so as to give them the effect of permanent laws. It is, however, the common practice, when a permanent law is thought desirable, to pass it in the States, and submit it to Your Majesty in Council for approbation. When this approbation is received, the law is registered by the Royal Court, and becomes permanent.

In the year 1771, the States transmitted, for the approbation of the Crown, a Code of Laws, which received the Royal Assent in Council. By the Order in Council it was declared "that all other political and written laws heretofore made in the said Island, and not included in the said Code, and not having had the Royal Assent and Confirmation, shall be from henceforward of no force and validity." There may be some doubt as to the meaning to be attached to the words "political" and "laws heretofore made;" but we presume that they cannot comprehend the customary law, for, if they did, there would be hardly a criminal law existing in the Island.

The Code of 1771, on inspection, will be found to fall far short of that which, from the language of the Order in Council, it might be expected to be. It contains but one criminal enactment, namely, a provision as to accessories of criminals, and to prison breakers and persons aiding them. Mr. Marett, a distinguished advocate now practising in the Royal Court, after mentioning an unsuccessful attempt to obtain "une Commission pour préparer un Recueil de nos Lois et Coûtumes," adds, "Nous en sommes encore à désirer la réalisation d'un projet si utile, car personne, nous pensons, ne voudra prétendre que la compilation du petit volume relié en parchemin, qu'on s'est plu d'honorer du titre de Code, en ait diminué la nécessité." (Notice sur la Vie, &c., de Mons. Le Geyt, p. xii.)

One very important change was, however, made by the Order in Council which sanctioned the Code of 1771. Down to that time the Royal Court had the power of passing Ordinances without the assent of the States. But the Order in Council provides "that no Laws or Ordinances whatsoever, which may be made provisionally, or in view of being afterwards assented to by His Majesty in Council, shall be passed but by the whole Assembly of the States of the said Island." The union of judicial and legislative power is a feature not unfrequent in the constitution of imperfectly civilized States, and is generally discovered to be an oppression and abuse at an early stage of their advance. It prevails at present in Guernsey to a much greater degree than, as far as we can trace, it ever has prevailed in Jersey, and is there highly prized by a large portion, we believe the majority, of the inhabitants, as an important constitutional privilege. But it is surprising to find it endured so late as 1771 by the inhabitants of Jersey; and perhaps it is still more strange to find that the disunion of the two powers, which was commenced seventy five years ago, has not yet been completed.

In 1845 there was published, we believe by the authority of the States, a compilation entitled "Lois et Réglemens des États de Jersey, qui ont reçu la sanction Royale, depuis 1771." Among these will be found very few enactments connected with the general criminal law.

The source of the law of Jersey, which we have lastly to mention, is the Imperial Legislature. An Act of Parliament mentioning the Island is immediately law without registration; but such an Act is registered by the States under Order in Council to that effect. It does not seem to be quite settled whether it be necessary that the Island should be expressly named in order to bring the Act of Parliament within this rule, or whether it would be sufficient if it appeared, by necessary inference, that the enactment was meant to extend to the Island: but, on principle, we conceive that a necessary inference would be enough, as the only ground for construing an Act to be applicable to Jersey must be that it appears that the Legislature intended that it should be so applicable. Indeed, the Code of 1771 seems, by its language, to extend the effect of Statutes of the realm still further. "Quant aux actes de Parlement où l'Isle est rapportée, *et dans lesquels elle est intéressée,* ils doivent être exemplifiés en forme, sous le Grand Sceau d'Angleterre, et envoyés en ladite Isle, et là être enregîtrés, et publiés, afin que les habitans en aient la connoissance" (not to give them validity) "pour s'y conformer, et éviter les peines des transgressions."

In many instances, where it is thought that an Act of Parliament, though not

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so framed as to extend to the Island, might be applicable there with advantage, the States pass an Ordinance to the same effect, mutatis mutandis, which is transmitted for the approbation of Your Majesty in Council. Some alteration is, in such a case, almost invariably necessary, as the nature of the institutions of Jersey commonly renders the provisions of the English law inapplicable in detail.

We know of no change in the Criminal Law, introduced by Act of Parliament, except some that relate to matters of Commerce, Navigation, and the Customs.

We have enumerated the only acknowledged sources of the Criminal Law of Jersey. But, upon examining into the law as it actually exists, we can find hardly a single instance in which either the definition of a crime, or the punishment which is inflicted for it, can be traced distinctly to any of these authorities, except in the cases of offences against local regulations or fiscal enactments. A practice of the Courts, arbitrary and varying from time to time, seems to have nearly superseded the ancient law, and to be itself liable to future changes, equally arbitrary and variable.

The state of the Criminal Law of Jersey was the subject of discussion and review in the year 1789. In 1786 the majority of the States passed a vote for the establishment of trial by jury, in all cases, civil, mixed and criminal. This was submitted to the Privy Council: and by an Order in Council, made on the 10th of May in the following year, the Royal Court was ordered to state its objections for the information of the Lords of Council. Accordingly, on the 5th of July, 1788, a series of observations in opposition to the proposed plan was drawn up and signed by the Bailiff and seven Jurats. The Privy Council, after consideration of the observations, and hearing counsel on behalf of the States in support of the proposition, made an Order, on 21st of July, 1789, that M. Pipon and M. Durell, then respectively Procureur Général and Avocat de la Reine, and M. Hemery, one of the Jurats of the Royal Court, and M. Dumaresq, then Constable of one of the Parishes, the last two having been appointed agents for the States in prosecuting the matters before the Committee, should "conjointly or separately prepare and lay before this Committee, a statement of the mode of proceeding in the said Island, and of going to trial in all causes, criminal, civil, and mixed, containing therein what they apprehend to be the true law of the Island, from the first commencement of proceedings, in any of the said cases, to the final judgment thereupon had and obtained." And "that the said Thomas Pipon and John Thomas Durell, Esquires, and James Hemery and John Dumaresq, Esquires, do also prepare and lay before this Committee, conjointly or separately, what they conceive to be the criminal law of the Island of Jersey, specifying the crimes, enumerated in the said law, and the punishments thereby inflicted upon the commission of each of the said crimes."

Messrs. Pipon and Durell were considered to represent the view of the Royal Court, and Messrs. Hemery and Dumaresq those of the States. Accordingly, a Statement was prepared by Messrs. Pipon and Durell, which, on the 2nd January, 1790, was interchanged with a Statement prepared by Messrs. Hemery and Dumaresq. Both these Statements are said to represent fairly the actual condition of the law.

We ourselves examined the members of the Bar, in the presence of the Bailiff and several Jurats, as to the law prevailing in respect of the principal offences which form the subject of criminal jurisprudence generally; and we made use of the Statements above mentioned for constant reference during this examination. We have already declared in general terms the result at which we arrived: but we think it right to draw Your Majesty's attention to some instances in detail.

The punishments for crime, properly so called, mentioned in the Grand Coustumier, are: death, by burning, hanging, or burying alive; loss of limb, commonly according to a sort of lex talionis; and banishment. (Gr. Coust. ch. 23., and Gloss.). Banishment was, indeed, not properly a punishment, but the consequence of contumacy in flying from justice. Of these, hanging and banishment alone remain. The others have disappeared; and the Gloss sets forth rather curiously the principle upon which the law was modified in very early times.

"Plusieurs punitions demeurent en tel cas *en la raison et discretion de justice*

*selon lexigẽce des cas*, & *semble* q'l debueroit estre pillorie ou puny par longue prison, & par grande amende de justice, & a partie. Et luy pourroit len bien couper loreille ou ung poing selon lexigence des cas *& lestat des personnes.*" And afterwards: "Toutesfois justice ne doibt pas estre ainsi legiere ne incline a pyllorier pour tel cas ou semblable *ung homme destat* ne a le punir par peines infamables ne par destresse de prison comme *une simple personne.* Mais le doibt punir par grandes et grosses amendes: tant a justice q̄ a partie. Et se len demandoit pour quoy les punitions ne sont *terminees* en tous iceulx cas comme elles sont en crimes capitales. Len pourroit respondre que cest pour la grand mutation et variation des cas qui adviennent qui sont differentz lun de lautre et dignes de greigneure punition lun que lautre selon leur circunstance. Et pour ce *ny peut on vrayment determiner aultre punition.* Mais conuient auoir recours *a la discretion de justice et de raison*, qui doibt sur ce pourueoir: en baillant punition greigneure on mẽdre selon que le cas le req'ert."

These passages were brought before us in evidence: and, although the very able lawyer, Mr. Hammond, who was then under examination, declined to state positively that such a discretion was now claimed, he added, "the practice has been very analogous to the reasoning of the passage which has been cited." And Your Majesty's Procureur Général, shortly afterwards, expressed himself thus: "The Court use their discretion or equity. Whether it is in consequence of that passage which has just now been cited, I cannot say."

The principle upon which the discretion was exercised, according to the passage cited, was the avowed incapacity of the law to classify crimes so as to assign proper punishments to each offence and each person. And some discretion of this sort must necessarily exist, even where the classification is as nearly complete as human language permits. By the English statute law, it is very commonly left to the Courts to assign, within certain limits, the length of transportation or imprisonment, and to select between the two; and the common law, in the cases of offences punishable by fine or imprisonment, leaves an almost unlimited discretion as to time and amount. This, however, is very different from sanctioning a system in which there are absolutely no limits, in any case whatever, and in which the very nature of the punishment is itself discretionary. The effect of the system at Jersey is, that a period of no long duration suffices to make particular kinds of punishment so entirely obsolete as practically to remove them from the law altogether. The changes of law have, generally, been made in the same direction with those of the English law. Thus, breaking into a dwelling house by night and stealing therein is now never visited with death, though it was formerly capital; and so with many other offences: and a still more remarkable change has taken place, apparently in imitation of the English Law. Transportation, which in England originates entirely in Statute, has been introduced into the Law of Jersey, and has now almost entirely superseded banishment. The language of the sentence of the Court is, "La Cour les a condamnés pour punition de leur crime à être deportés *à tel lieu* qu'il plaira à Sa Très Excellente Majesté en Conseil d'ordonner pour le terme de sept années." Now, if the discretion lodged in the Court really be so large as to make this legal, it is, on principle, quite competent to the Court to order that a man convicted of stealing an apple should be broken on the wheel. It was, however, suggested that, in any case of transportation, the sentence acquired a legality from the Order of Privy Council, which ensues. Strictly speaking, any punishment whatever might be inflicted by Order of Privy Council, just as in England by Act of Parliament. But, if this be the real explanation of the sentence of transportation, there is, in every instance, an illegal sentence passed by the Court in Jersey, followed up by an ex post facto law legalizing the sentence in each particular case. This explanation, therefore, can hardly be received. Further, it is very doubtful whether the Order of Privy Council can be so construed. That Order recites the Act of the Jersey Court, and that the Court "have proceeded in this matter as far as they are authorized to do by the laws of the said Island." It then sets forth that "Her Majesty in Council was pleased to order, and it is hereby ordered, that the said A. B. and C. D. be transported out of the Island of Jersey to Van Dieman's Land, &c." The true interpretation of this Order rather appears to be that the legality of the sentence of the Jersey Court is assumed, and that the Order simply assigns the place. An attempt was made in the Court of Queen's Bench, in Easter Term, 1847, to raise the question of the legality of the whole proceeding, by bringing before that Court, under

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a writ of habeas corpus ad subjiciendum, two criminals who were in an English prison under the sentence. But that Court held that the return to the writ asserted the legality of the proceeding; so that the principal question could be raised only by impeaching the truth of the return, which, of course, could not be done upon a motion to discharge the prisoners on reading the return.

The passage which we have already cited from the Gloss affords an instance of the attempts made by the Norman lawyers to connect, either by implication or strained interpretation, the actual practice with the little that has been committed to writing in the Grand Coustumier. In fact, that compilation cannot properly be considered as treating of Criminal Law otherwise than incidentally. In the Statement of Messrs. Hemery and Dumaresq the following remarks occur upon this subject (p. 48). "Generally speaking, we must say, that there is no criminal law here. The Grand Coûtumier of Normandy, which the said late majority of the Royal Court, in their observations, state to be (and very properly, if confined to civil causes) the municipal law of Jersey, can be considered, in no other light, than as a civil code; for although some chapters treat of criminal suits; and others make mention of crimes and misdemeanours, the punishments are not specified in either. The plan of the work in this respect, was evidently to point out the process by which persons injured in any shape might individually obtain redress, and what tribunal was competent to hear their suit. Crimes are also interwoven, for the sake of showing how property is affected by attaints. No corporal punishment indeed short of death or loss of limb, is at all mentioned; and then it is brought in by inference, and in no part enacted as a law." The counter Statement of Messrs. Pipon and Durell contains many attempts, altogether unsuccessful as it appears to us, to deduce the present criminal law from the ancient Norman law. We shall presently have occasion to advert to them more fully. We will, however, add one more instance of this attempt at accommodation, from the old Gloss.

Under the head of Suyte de Meurdre (ch. 68. fol. 90.), the Grand Coustumier, after detailing the process by which the son, &c., of a person supposed to have been murdered may pursue his remedy against the accused party by battle, goes on to declare that, if there be no person to institute this proceeding and a party be generally suspected of the crime, he is to be put in prison for a year and a day, "a peu de menger et de boire," unless he offer to undergo the inquest of the country. On this the Gloss has the following comment. "Et iasoit ce que le texte ne declaire poinct en ce pas que len doye mettre en tourmētz cil qui est accuse de tel cas, si le y peut on mettre. et ainsi est use et garde notoirement. Et la cause pour quoy le texte nen parle, est pour la diversite et variation des questions et tourmentz qui y sont cōuenables en tel cas." "Et si peut on dire que telles destresses peuēt assez estre entendues par le texte que met, que on doibt tenir en prison cil qui est accuse de tel crime jusques a ung an et ung jour a peu de boire et de menger: lesquelles choses *supposent* destresse."

It is, we think, plain that the licence assumed by the Court is not a deviation from the general spirit of the old Norman law, and that it is in conformity with the same spirit that attempts are made to reconcile the practice in fact with what is found in writing.

In the Grand Coustumier, chapter 67, which treats "De querelles," we find the earliest passage which can be referred to as classifying offences: and it completely confirms the opinion expressed in the passage before cited from the Statement of Messrs. Hemery and Dumaresq, as to the absence from that compilation of any thing which can be considered a distinct account of the Criminal Law.

"Querelles" are thus described "Q̄relles sōt *contendz entre celuy q̄ se plaīct & celuy de qui len se plainct.*" Then these querelles are divided into those which relate to persons, and those which relate to other matters. The divisions and subdivisions of the first class lead to certain heads of Criminal Law. The classification may be exhibited as follows.

Querelles appertain

I. To things other than persons.

II. To persons, which are

1. De dict.
2. De faict, which are
   - A. Simples.
   - B. Criminelles, which are
     - a. De meurdre.
     - b. Dhomicide.
     - c. De mehaing.
     - d. De tresues fraīctes.
     - e. De despucellemēt de femmes a force.
     - f. De roberie.
     - g. Dassault de charue.
     - h. Dassault de maison.
     - i. [Dassault] en la possessiō a cil qui fut assailly.
     - j. De trahison.

The Grand Coustumier adds: "Toutes telles manieres d' suytes sōt appellees de felonnie." And in chapter 75 it is laid down that, in all suytes which may terminate capitally, the offence complained of must be alleged, in the plaint, to have been committed "en felonnie & en la paix de dieu & du duc." For all these crimes the trial was by loi apparissant, which terminated in bataille when suyte was made, and, when suyte was not made, by enqueste de recongnoissant. And all might be compounded, after gages given for battle, except trahison and larçin. (G. Coust. ch. 76.) But the word felony no longer appears in legal proceedings as designating a class of crime in Jersey. It is, however, found in an Ordinance of March 7, 1842, which speaks of offences "au dessous de félonie."

According to the Grand Coustumier (ch. 67.), the appellation of "criminal" is used "pource q̄ elle nayst de tel crime dequoy len doibt et peut *perdre vie ou membre.*" Prosecutions for these appear to constitute one class of the Pleas of the Sword. A Plea of the Sword (plet de lespee) is defined in the Gloss (ch. 53. c.) to be "proces dexces & de malefices." In another passage of the Gloss (ch. 6. l.), the words of the Grand Coustumier "pour causes criminaulx ou pour le plet d' lespee," are thus commented on: "il sentent par ce mot [le plet de lespee] pour aulcuns malefices qui ne sont pas criminaulx." As we find that, in chapter 53, prosecutions for murder and homicide are mentioned as instances of the Plea of the Sword, we conceive that the Pleas of the Sword comprehended prosecutions for all offences, but that, of these, offences of one class only, those visited by loss of life and limb, were termed criminal.

The Gloss on chapter 67 (e.) states that there are many other modes of making suyte in criminal matters, besides those specified in the Grand Coustumier, and mentions, as instances, suytes in the case of "aggresseurs de chemins publiques, de sacrileges & aultres selon les matieres des mesfaictz;" and adds, that the classification "met les plus generales manieres de faire suytes criminelles, soubz lesq̄lles peuent estre cōprinses toutes les aultres particulieres, selon ce q̄ les mesfaictz sont faictz, & que les cas aduiennēt."

In the Constitutions of King John the following exception is made from the jurisdiction of the Royal Court. "Exceptis casibus nimis arduis, et" [supposed to be a wrong reading for *ut*] "si quis legitimè convictus fuerit a fidelitate Domini Regis tanquam proditor recessisse, vel manus injecisse violentas in ministros Domini Regis modo debito officium exercendo." This takes away the jurisdiction for the offences comprehended under the head j. But the offences, numbered a, b, c, d, e, f, g, h, i, would all, where no positive enactment has interfered, be, according to the text, punishable legally by loss of life or limb. We have already mentioned the forms of punishment known to the Norman Law, and have pointed out that loss of limb is, in fact, no longer inflicted, and that the different modes of inflicting death have all disappeared except hanging.

The punishment of death is still inflicted for murder (headed a.).

As to the head b., the lawyers of Jersey now define homicide to be killing without malice. The remarks upon this part of the law, in the Statement of Messrs. Pipon and Durell, afford a very curious instance of the perpetual and fruitless attempt to reconcile the modern practice with the old and unrepealed

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law. "Homicide, or the killing of another without malice is *not* punished with death, but with such other punishment as the circumstances of the case may render proportionate to the degree of guilt; and may be extended to perpetual banishment: this distinction and degree of severity, *we hold to accord with the custom first quoted above*, where homicide is pointed out as an offence different from murder, and ranked among the crimes punishable by loss of life, or limb, *by which it must be implied* that the crimes against which those punishments are denounced, shall incur *the one or the other* of them, according to the degree of guilt which may have accompanied the action: and Terrien seems in his annotations upon murder and homicide book 12. ch. i. to confirm that distinction where he says, letter E. '*Some allow* a difference between murder and homicide, saying, that murder is done wilfully or voluntarily and with deliberate purpose, and homicide albeit it be a general term, is understood of that which happens in rixâ, and which is done in present anger.' As the punishing by loss of limb is long since disused, and was so even at the time the commentator" (i. e. the French Gloss, already cited in this Report) "wrote upon the ancient custom, as appears in his annotations upon ch. 23. of forfeitures, letter A. where he says 'for the exposition of this question one must take notice that anciently it was usual to inflict on an offender in such case, a punishment equal to the crime by him committed, that is to say, if one put out the eye of another, by the loss of one eye &c. and this was called punishment or law, ad pœnam talionis. But at this day this law is not observed because in such case several punishments are left to the judgment and discretion of justice according to exigency; and ought to be by pillory, long imprisonment and heavy fine to the King and to the party.' *It will not appear strange* that the last mode is now followed that is of punishing by *banishment*, imprisonment or fine according to the nature of the offence and the degree of guilt." It is remarkable, however, that what follows in the Gloss distinctly shows that mutilation was not disused, although the lex talionis was no longer strictly applied. And, further, we find the following distinction between murder and homicide in the Gloss on chapter 70 (b.). "On peut dire q̄ meurdre et homicide sont en escript tout vng: mais ilz differēt en maniere de faire: car meurdre est quād aulcun est occis p'estrangler ou meurdrir ou en sēbleble maniere: et homicide est quād aulcun est occis p' playes et occisions despees, et de haches ou daultres ferremētz." Passing over these difficulties, the course of the reasoning by which it is thus attempted to reconcile the present law with the ancient custom is, as far as we can comprehend it, as follows. The custom of the 13th century prescribes, for both murder and homicide, loss of life or limb, but thus implies a distinction between the two crimes; loss of limb was in part discontinued in continental Normandy in the 16th century, and pillory, imprisonment and fine substituted. Therefore, in Jersey, it accords with *the custom* to punish homicide without malice neither by loss of life, nor of limb, the only punishments mentioned in the custom, but by three other methods, two only of which are substituted in the 16th century, and the third not assigned to the particular offence at all by any law alleged, in the argument, to have prevailed at either time. This distorted and contradictory argument is resorted to, apparently, from unwillingness to state plainly that the ancient law prescribed one punishment, but the tribunals of Jersey have chosen, on account of its indiscriminate severity, to substitute another.

About a century before the Statements of 1790 were interchanged, the state of the Jersey law, as to homicide, came under the consideration of the Privy Council. In March, 1689, the deputies of the States represented "the great defect in their customs of proceedings in criminal causes;" and the King in Privy Council, "in regard that there is no distinction made there betwixt wilful murder, manslaughter, and chance medley," ordered "that, if for the future it shall appeare by good evidence to the Royal Court in Jersey, upon the tryal of any persons for murder, manslaughter and chance medley, that there is no premeditated malice, and that the partys are fitt objects of mercy, the judges of the said Court do upon such occasions suspend all further proceedings against the criminal, until His Majesty be made acquainted with the state of their respective cases, and His Royal pleasure be signified thereupon." The immediate occasion of this Order was the trial in Jersey of Jean Aubin, who had slain a man, as was found by the jury, unintentionally. The Judges remanded him to prison "jusqu'à autre ordre." Application was then made to the

Crown; the prisoner was discharged by Royal order; and, there having been a contemporaneous representation of the defect of the law of Jersey in this respect, the general Order was made, as above stated.

Le Geyt, the learned commentator on the constitution, laws and usages of Jersey (writing very shortly after the time of the last mentioned Order), relates this occurrence (vol. i. p. 324). He also mentions two earlier cases, which are, he says, all that he has been able to find on the subject. The first was that of André Laurans, in 1646. He was accused "d' avoir proditoirement frappé," causing death; but he alleged that he had done it in self-defence. The majority of the jury "ont rapporté à la décharge dudit Laurans." The judgment of the Court was remarkable. "Ledit Laurans a esté déclaré exempt de la rigueur des loix et peine deüe à tel forfait. Nonobstant, veu le soupçon, ledit Laurans est envoyé prisonnier au Chasteau, si" (*jusqu'*, in the original record), "à ce que Messieurs de la Justice en ayent communiqué avec Monsieur le Lieutenant-Governeur, pour après estre procédé à son eslargissement." No liberation, however, of the prisoner appears on the Acts of the Court; but Le Geyt mentions that "quelque temps après la prison fut rompue." He observes that it is not clear what was the intention of the Court; but he considers it probable that they meant "d'en faire par là quelque exemple pour rendre le monde plus précautieux dans les querelles." He infers, however, that at that time not every homicide was considered a murder. The second case which he mentions occurred in 1666. A soldier named Wilson killed a man named Coke, by a musket-shot; the evidence showed that the event was accidental; and the law officers of the Crown abandoned the prosecution: and the Record of the Court states: "Le dit Wilson demeure partant en liberté et déchargé de la poursuite faite contre luy à raison de la mort ainsi arrivée audit Coke inopinément et par un accident que le dit soldat ne pouvoit prévoir." This, says Le Geyt, "fait voir combien peu de penchant l'on avoit alors pour ne pas distinguer l'homicide." A remarkable passage on this subject is to be found in the Gloss on chapter 75 of the Grand Coustumier, where the text contains the passage, which we have already cited, stating the necessity of charging felony in the plaint. The Gloss (d.) says: "Est pour determiner la differēce de ceulx qui sont occis ou mehaingnez daulcun par aulcune fortune on inaduertēce: et de ceulx qui sont occis ou mehaingnez a essient. Et par ce peut on dire que se aulcun estoit mehaingne par fortune ou inaduertence quil pourroit suyuir de gaige, et ne seroit pas le cas criminel" (but a civil querelle, we presume, triable by loi apparissant): "mais seroit le mafaicteur *puny pour exemple, selon la discretion de justice*" (besides, as we conceive, the amends to the kinsman of the party slain, or to the party maimed). "Et toutes fois fault il biē noter que lingnorance ou inaduertence du cas soit de soy excusable, et quil ny ait poinct de mal appensement." It is to be regretted that we cannot fix the date of this Gloss: it is, however, worthy of observation that the only case exempted, on the ground of the absence of malice, is accidental homicide. About twenty years after the case of Wilson followed the trial of Aubin, and the Order in Council already mentioned, with two or three more Orders nearly to the same effect.

Le Geyt complains, and we think very reasonably, of the Order in Council. It seems quite clear that a distinction between different kinds of homicide was already recognised by the Court of Jersey: and, had this not been so, the proper course would have been to introduce a fresh law, not to leave the old law to be corrected by a pardon from the Crown.

In 1699 a different view was taken by the Privy Council. It is recited, by an Order of that date, that an Order of 1698 was grounded upon a representation, formerly made to His Majesty, that by the law of the Island "the punishment was capital in all cases where any person was found guilty of the death of a man, and that there was no distinction of punishment in cases of murder, manslaughter or chance medley: and His Majesty having been since informed that, according to the law and ancient usage of that Island, the Bailiff and Jurats upon the tryall of any person accused for the death of another, unless they find the offence to be murder, do not procced to inflict capital punishments for the same, but to inflict lesser punishments, according to the nature and circumstances of the offences; His Majesty hath, therefore, thought fitt in Council to order that the said Order of the 23rd of June, 1698, for stay of execution in cases of murder, manslaughter and chance medley, until his Majesty's pleasure could be known, shall be restrained to cases of murder, and

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other cases where capital punishment is inflicted, and where the said Court shall think the offender a fitt object of His Majesty's mercy, and no other."

It being thus established that the Norman law, though not formally repealed, is practically abrogated in this respect, the question which next arises is, what line is drawn between murder and mitigated or justifiable homicide. In the English law the distinctions on this point are laid down with anxious and minute jealousy, producing, as has been sometimes thought, an excess of scruple and subtlety. But we find nothing of the sort in the law of Jersey. Le Geyt, who shews (as above) that the distinction between murder and other homicide had become known to the law of Jersey, is compelled, in explaining that distinction, to rely upon the analogies deduced from the Mosaic, Civil, English and French law. At present, English books are constantly cited on the subject. The learned Advocates, who gave evidence before us, did not quite agree how long this had been the practice: but it has certainly prevailed for several years. They also differed as to the degree of reliance to be placed, in this and other criminal questions, upon the English authorities. Some seemed to consider that they could be used merely as illustrations, and that, in this respect a treatise from any other system of law ought to have equal weight. But there seems to be no doubt that the English authorities are those to which by far the most frequent reference is made.

We have dwelt upon this head of crime the more fully, because it enables us to present to Your Majesty's view a very strong instance of the general principles and practice under which the present system has grown up, and because it so happens that we are here enabled to trace the transition with rather more particularity than in other cases. We have, in the customary Norman law of the 13th century, homicide classed among the crimes punishable by loss of life or limb (probably the former only), and no other punishment mentioned in conjunction with that offence. The cause of this was, we have little doubt, that the punishment was, in the earliest state of this law, considered principally as furnishing reparation to the party injured, a principle not peculiar to Normandy. In the 16th century we find Norman commentators laying it down that, in the case of some crimes, a discretionary mitigation, to be exercised according to the difference between offences and persons, was consistent with the spirit of the custom, and stating, in particular, that accidental homicide was not a felony, and therefore not properly a crime, nor punishable with loss of life or limb. In the 17th century we find that the Court of Jersey took notice of the distinction between different kinds of homicide, and inflicted death for murder only; but that this was far from being completely understood, that the punishments for the lesser grades of the offence were unsettled, and that the consequence was a series of contradictory and ill digested legislative acts by the Privy Council. At the close of the 18th century, we find a practice to prevail, closely resembling that of England, and widely differing from the Norman law, but still asserted to be deducible from the custom. At present, we find the same practice and the same assertion, with this only addition, that the conformity to English law appears to be more completely established and less scrupulously avowed.

Mehaing, or mayhem, is not defined in the Grand Coustumier. The French Gloss on chapter 74 is as follows. "Il conuiēt quil y ait sang & playe ou aultre chose q' equipolle dont il sensuyue perdition de membre, comme dun bras, ou dune jambe, ou dauoir les yeulx creues." And, shortly afterwards, "mehaing est quand aulcū est blecie en telle maniere q'l en perd aulcū membre: sicōme pied, ou pōig, ou aultre mēbre principal, come les yeulx. Et ne seroit pas mehaing comme il est prins en ce p'pos dauoir ung oeuil creue ou vng doig couppe: car les deux yeulx ne sont que vng membre principal. Et aussi ung doig nest que partie dun membre principal." Terrien says (xii. l.), "Mehaing est perdition de membre:" and it is afterwards added: "Il est ordinairement prins pour toute blessure & coup donné a sang et playe." Messrs. Pipon and Durel say: "This crime, *agreeable with the foregoing explanation*" (that given under the head of Homicide) "*instead* of being punished by the loss of member for member as anciently it was, would now be punished by fine and imprisonment with damages to the party injured proportionate to the degree of guilt attending the action, and the consequence of the hurt received; and where it was very atrocious corporal punishment might be inflicted." We are

not quite certain whether they here speak of mayhem as a definite crime, or simply as a species of assault for which the law of Jersey (as will be afterwards explained) allows a mixed criminal and civil process. But it can scarcely be said that there is anything in the modern law answering to the crime spoken of in the Grand Coustumier. In lieu of mayhem, the party is charged with the specific act, and, if found guilty, is punished by transportation, or imprisonment, with or without hard labour, and with or without a fine.

With respect to the crime of Tresves frainctes, we copy the account of Messrs. Pipon and Durell. "Forfeiture of security to keep the peace by Rouillé, treues frainctes. As this security consisted anciently in the solemn assurance given in Court on oath to keep the peace, and neither do, nor procure to be done hurt to the complainant his family or possession the violation of such assurances *was* considered in the eye of the law as meriting exemplary punishment" (loss of life or limb, according to the Coustumier): "but *at this day* as this security is given upon pain of a pecuniary fine, the infringement would now go to the forfeiture of the recognizance, and to such further restraint upon the delinquent or punishment as the nature and evil tendency of the repeated violence and wrong offered *might authorise.* Rouillé upon this head chap. 72, letter B. lays down 'And therefore one must observe that forfeiture of securities in the manner they are taken in lay Court, is an assurance which is made by the corporal oath, that he who gives them shall not do hurt by himself or others to the person to whom given nor to his.'" It appears that a suyte for tresves frainctes, down to the time of the French Gloss, could not have been instituted without what is called a Cry of Haro, which is a formal public outcry made by a party to whom, or whose property, violence is offered. This, however, has altogether disappeared from the Criminal Law, without any enactment. And, in the Norman law, suyte for tresves frainctes could be made only where there was blood and wound. (G. Coust, ch. 76.) But this is not a requisite in the case treated of by Messrs. Pipon and Durell, which, it is manifest, in no degree represents that which the Coustumier lays down respecting this head of crime.

From the language of the Coustumier, it seems that the definition of the crime of rape was once not so wide as at present; it appears not to have originally comprehended anything besides the violation of maidens. Terrien, who is referred to by Messrs. Pipon and Durell, shews (xii. 14.) that in 1518 the law of continental Normandy inflicted a lighter punishment than death when the female was of loose character; but this he speaks of as a qualification or explanation of the Civil law. The crime in Jersey is understood to be the violation of any female; and the legal punishment is death. Thus the present law is not that of the Coustumier or even of Terrien; how or when it originated we cannot trace. It is, we think, impossible to treat the chapter in Terrien as of the least authority in the criminal law of Jersey. He mentions, under the head *Rapt*, the inveigling of young women into marriage without the assent of their parents or guardians; and he cites the following case. "Nous auons veu donner arrest plus rigoureux au Parlement de ce pays, par lequel vne chambriere, pour auoir attrait à son amour vn ieune homme fils d'vn riche bourgeois & marchant de Roüen, en la maison duquel elle estoit seruante, et l'auoir espousé clandestinement & au desceu des pere et mere du ieune homme, a esté condamnee à estre foüettee par les carrefours, bannie du Royaume de France, ses biens confisquez: et condamnee en quatre cens liures d'interest enuers le pere, & à tenir prison jusques au plain payment." This is clearly the Rapt de Séduction, which was unknown to the old Norman Law. This instance is one of many which shew with how great qualifications we are compelled to receive the evidence, upon this point, of one of the learned Advocates, who referred us to Rouillé and Terrien as satisfactory authorities for the unwritten law.

The definition of the crime of robbery, in the Grand Coustumier, appears from the language of the complaint: "Je me plaīg de B. qui en la paix de dieu et du duc massaillit, et me batit, et me fist sang et playe, et me tollit ma chape en roberie: pour quoy il me cōuinst crier haro." (Ch. lxxi.) The French Gloss lays down, "Il cōuient quil y ait eu sang & playe et cry de haro." This

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is requisite, says the Gloss, lest strong men should make false plaints against feeble men: the danger contemplated being, we suppose, the result of a trial by battle between unequal parties, which therefore was not allowed unless the robbery was characterized by manifest blood and wound. The Gloss adds afterwards, "Et p'ce que dict est sensuit que de larcin q̄ est fait furieusement" (a misprint, apparently, for *furtivement*), "len ne peut suyr de gaige" (and therefore no querelle criminelle). "Car les conditions dessusdictes ny sont ne peuent estre, par especial le sang et la playe: car se ilz estoient avec le haro, ce seroit roberie: et ainsi different roberie et larcin: car roberie est faicte a force et a cry de haro, et malgre celuy que on robe en sa presence. Et larcin se faict furtivement en derriere et absence de celuy a qui on emble."

The distinction is here drawn between theft with violence and theft without violence. For the latter no querelle criminelle, properly so called, seems to have been allowed, nor can we find distinctly that it was subjected to punishment merely as a public offence. It is true that it appears, from the 53rd chapter of the Grand Coustumier, that persons holding certain feudal tenures might, in some cases, entertain a suyte de larçin, whereas, in general, all suytes leading to corporal punishment (justice de corps) were exclusively in the jurisdiction of the Duke, or of those to whom such jurisdictionw as specially granted ("ceulx, a qui les princes de Normendie ont ottroye a avoir la court de telz choses,") evidenced by prescription or otherwise: but we believe that the suyte of larçin was an exception; for the Gloss on the 53rd chapter (fol. 73. f.) states that for this offence the offender might be adjudged to be hanged. The Gloss refers to the Ordinance commonly cited as the Chapitre De La Justice aux Barons, which limits the power of the feudal lords, in cases of larçin, to particular cases. We infer, on the whole, that the larçin thus spoken of comprehended larçin with violence, the capital crime.

In the 12th chapter of the Grand Coustumier "larrons" are mentioned as well as "robeurs;" but we believe the word "larron" to comprehend persons guilty of any larçin, violent or not; for, in chapter 3, the following passage occurs: "Aulcunesfois appelle len justice, la peine qui est enjoincte a aulcun par sa desserte: sicomme len dict. Je vy faire la justice du roy, dun larron que je vy *pendre*." And, in chapter four, it is said to be the office of the bailly "*destruire* les larrons;" and in that and the succeeding chapter the word is unquestionably used as descriptive of robbers, no other word for robbers occurring.

But from the 87th chapter, and the Gloss there (g.), it appears that larçin might be treated as a civil querelle de possession, to be tried, when the value of the property taken did not exceed ten sous, by loi simple (preuve de certain only, for the enqueste de droict, according to the Gloss on ch. 87. h., could not be resorted to), and by loi apparissant (bataille only, for, according to the Gloss on ch. 87. h., the enqueste de recongnoissant was here inapplicable) when the value was higher. Both these processes were in the nature of civil remedies; even the bataille was of a more mitigated kind than that waged in process properly criminal. The Gloss on chapter 87. g. appears to contemplate cases where the injured party had an election whether he would seek a remedy exclusively civil for a larçin, tending only to restitution of the thing stolen. The querelle was then only simple. We do not know whether this could take place in the case of a larçin with violence. In chapter 54 of the Grand Coustumier, it is said: "Les aultres querelles sont appellees simples" (opposed to criminelles): "pour ce que ceulx q̄ meffont en sont chastiez simplement, ainsi comme lenfant de la verge." This undoubtedly comprehended amends which the malefactor made to the party injured, upon a proceeding partly, at least, civil in its nature. But some punishment, as distinguished from mere remedy to the party injured, seems to have been awarded in cases of offences not amounting to murder, mayhem, or any thing to which the cry of haro appertained, as early at least as the date of the Gloss on chapter 12. b. Perhaps Terrien's Commentary (xii. 1.) upon the passage last cited from ch. 54 of the Grand Coustumier, represents the law correctly. "*Chastiez simplement.* C'est à sauoir d'amende pecuniaire *enuers le Roy*, et *enuers la partie*."

We do not pretend to speak positively as to the ancient law; and it is indeed very probable that the Gloss, though professing to explain the Grand Coustumier, lays down a law which had sprung up since its time.

Terrien (xii. 18.) speaks of robbery much in the language of the Grand Coustumier and Gloss. And afterwards (xii. 20.), referring to the passage, already cited from chapter 3 of the Grand Coustumier, which speaks of hanging a larron, he says that such rigour is not observed for the first and second offences of "simple larcin;" for that a larron is, for the first offence, merely whipped; for the second, besides being whipped, he has an ear cut off, or is branded and banished, with interdiction; and, for the third, he is hanged as incorrigible. But for a larçin "notable & qualifié" he may be put to death on the first offence: of which Terrien gives two instances, namely, for a "larçin domestique," and for cutting a purse in Court, "durant l'audience."

Messrs. Pipon and Durell treat very shortly of robbery. They define it to be "taking from a person by violence as on the highway, or from his house:" and they say that it is punishable with death; for which they refer to the Grand Coustumier. They adopt the law stated by Terrien, as to larçin which is not robbery. This law, they say, "seems deducible from that distinction made by the Coustumier between simple larceny, and the other kind styled as considerable and heinous larceny." We have, however, been unable to find the passage in the Grand Coustumier to which they here refer.

The present law of Jersey appears to be entirely unconnected with that laid down by any of the authorities which we have mentioned. The words felonnie, roberie, larçin, have disappeared. For all thefts, the word is now "vol:" and, in the charge, additional words are added to mark the aggravating circumstances, if any: as, for instance, "vol avec violence," "vol dans une maison habitée avec effraction," "vol dans la nuit." The sentence depends upon the degree of crime: but it is not easy to state the limits. At one time, vol avec effraction dans la nuit was punished by death; but this has not taken place for forty years; and it is doubted whether it would now be a legal punishment. The punishments now are transportation, imprisonment with or without hard labour, or banishment. Robbery with violence is punished in the same way, the old law being totally abrogated in this respect. And it seems to be agreed that what is laid down as to simple larçin in Pipon and Durell, if it ever was law, is so no longer, and that it would be illegal to put to death for a third simple theft.

The "vol, dans une maison habitée, avec effraction, dans la nuit," is the offence corresponding to one case of burglary, in the English law, that where the particular felony contemplated is stealing, which is effected. We were told that the effraction must be an actual breaking and not merely, as in the English law, a technical breaking; and that this would be a question of common sense. We found, however, that the learned advocates did not agree as to what would be the result of this test in a very simple case, that of lifting a latch and thrusting in the hand only. Burglary in the larger sense, breaking into a dwelling house by night with intent to commit felony, stands on a different footing from vol. The case was brought before the Privy Council in 1790. John Rival was charged with getting in at a window, convicted, and sentenced to be whipped, banished from the Island for seven years, and his personal property confiscated to the use of the king. The Court then reported the case to the Sovereign as follows. "But the Court, at the same time, considering that there is no positive law or custom in the country which decrees a punishment for the crime in question, and that the Judges are obliged, by their oath, to pronounce sentence according to the laws and customs of the Island; the Court judged that the sentence should be suspended until your Majesty's pleasure should be known." The Committee of Privy Council pronounced as follows. "The Lords of the Committee, in obedience to Your Majesty's said order of reference, have taken the said Act and proceedings into consideration, together with a subsequent letter of the 23rd of June, 1790, from the Greffier of the Royal Court, written by direction of the said Royal Court, in which it is set forth, That formerly the Royal Court did certainly order the infliction of corporal punishments without seeming to need the authority of a law, or having any fixed rule to go by, as appears by the dissimilarity of punishments inflicted for crimes of the same nature. That the Royal Court exercised also the power of legislation; laws and ordinances were as often enacted by them as by the body of the States: but of this accumulated power of legislation and jurisdiction the Royal Court were deprived by His Majesty's Order in Council, bearing date the 28th March, 1771, and prefixed to the Code of Laws; which Order expressly declares that all

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other political and written laws heretofore made in this Island, and not included in the said Code, and not having had the Royal assent and confirmation, shall from thenceforward be of no force or validity. Whereupon their Lordships do agree humbly to report as their opinion to Your Majesty, That, as there is no law in Jersey, for so they are informed, to make burglary a capital offence, it cannot be considered as a felony, unless the breaking of the house in the night time is accompanied with a theft; but the simple act of breaking into the house, especially if done with an intent to steal, is a very high trespass and misdemeanour, and punishable by fine, imprisonment, corporal punishment, or banishment for a certain time, according to the discretion of the Court; and they are therefore of opinion that there is no defect of law for the punishment of this offence, and the application to Your Majesty to make a law, '*ex post facto*,' to punish the criminal, is highly improper. But, if the States should think it expedient to make the offence of burglary a capital offence, as it is by the law of England, they may, if they shall be so advised, propose a new law for Your Majesty's consideration, in order to be enacted and confirmed by Your Royal sanction, after Your Majesty shall have signified your allowance to have such a law enacted. Upon this ground the Committee think it may be advisable, if Your Majesty so please, to order the Royal Court to carry their own sentence into execution."

If this is to be understood (as was assumed in the evidence before us) to authorize the Court to visit any act which may appear wrong and mischievous (though not a breach of any definite law, written or other) with a punishment, at their discretion, stopping short of capital punishment, it follows that the discretion, which we have found to be exercised as to visiting a defined crime with arbitrary punishment, is extended to an enlargement of the range of punishable crimes.

Two of the species of assaults mentioned in the Grand Coustumier as punishable by loss of life or limb (headed above as g. h.) are spoken of in the same treatise, in chapter 75, and classed with two others, "Assault de Chemin," and "Assault de Champ." The nature of these, and, we assume, of the third mentioned in the Grand Coustumier (headed i.), appears from the language of the plaint: "Je me plaing de P. qui en la paix de dieu et du duc me assaillit felonneusement a ma charue en aguet pourpense, et me fist ce sāg et ceste playe que ie monstre a la iustice."

The passage respecting these offences in the Statement of Messrs. Pipon and Durell, is as follows. "Assault of the Plough, This ranked by Rouillé among the crimes punishable with the loss of life or limb, would be deemed punishable by fine and perhaps imprisonment according to the guilt the action bore, but not capitally, *except it was accompanied* with robbery. Assault on the house, or possession of the person assaulted. This would be punished with more or less severity according to the heinousness of the offence, at the discretion of the Court, *except such an assault amounted to robbery, burglary or arson*, in which cases the criminal might be punished with death; Rouillé, in the 4th chapt, de justicier says thus 'the Bailly is called the justicier of the land who is appointed by the Prince or by the Duke and has power of exercising justice and judging the people submitted to him, for he is appointed to keep the peace, to decide quarrels, to destroy the thieves murderers and house-burners, and other evil doers.' And again upon the cry of haro chap. 54, he gives the text as follows 'Because it ought not to be cried but in criminal cases, as in that of fire, larceny or homicide, or for some other apparent danger.' And Terrien in book 3. chap. 5. speaks in the same words as Rouillé in his 4. chapt." All that Terrien does is to cite the passage.

It seems to us that Messrs. Pipon and Durell have not, in respect either of the nature of the offences or the species of punishment, identified the assaults, spoken of in the Grand Coustumier as crimes, with any thing known to the modern law of Jersey.

We have now discussed the offences spoken of as crimes in the 67th chapter of the Grand Coustumier. We do not feel confident that we have fully understood the law found there; but it is sufficient to shew that the criminal law cannot be extracted from that work in a definite form; and that, even if it can, it will be but ill adapted to the present state of society. We purpose next to

notice the other offences treated of in the Statement of Messrs. Pipon and Durell.

Arson is punishable with death, and appears to have been so in early times. This appears by implication in different passages of the Grand Coustumier. In chapter 4, it is said that the bailiff is appointed, besides other purposes, "pour *destruire* les larrons, les homicides, *les ardeurs*." In chapter 12, the duty of the Duke is described to be to search out, by the bailiffs, and put in prison, "les larrons, les robeurs, *les ardeurs*, les homicides," &c., "tant quilz en ayent receu leurs souldes." In chapter 54, it is laid down that haro ought not to be cried "fors pour causes criminelle: Sicõme pour *feu*, ou pour larcin, ou pour homicide, ou pour aultre *euident peril*: Sicomme se aulcun court seure a ung aultre le cousteau trait." It is possible, however, that this passage may relate generally to the case of fire, not particularly to malicious burning. In chapter 69, the law is expounded as to summoning and challenging jurors in criminal cases; and it is said: "Ainsy doibt lẽ faire de ceulx qui sont cõmunement blasmez dhomicide, *darson*, de larcin, ou daulcũ aultre *crime* de quoy il nest aulcun qui les suyue."

It seems that the offence is only that of burning a house. Burning a stack would not be considered a capital crime, but would be treated as an offence against property, and punishable at the discretion of the Court.

Forgery, in the time of Messrs. Pipon and Durell, was punishable by pillory. The Gloss on chapter 23 (a.), among cases in which an offender would be punished by his hand being cut off, mentions "se vng homme auoit faict vne faulse lettre." We do not precisely know the meaning of this; nor are we aware of any other evidence of the state of the ancient law. The crime, as now understood, consists in counterfeiting any writing for the purpose of effecting a fraud upon property. It was, not long ago, punished by the pillory, scourging, banishment, and cutting off the lower part of the ear. At present, we presume that the Court would punish by transportation or imprisonment, using its discretion as to the degree of severity.

Perjury, according to Messrs. Pipon and Durell, is punishable like forgery. They do not point out any trace of this in the ancient law. It does not, however, seem clear what the punishment would now be: no modern instance of trial for the offence is recollected.

Frauds are thus spoken of by Messrs Pipon and Durell. "Other frauds, such as are cheats of various sorts, are punishable by fine and imprisonment at the discretion of the Judge, according to the circumstances of each case." No more is said on this subject: but the law of Jersey appears to comprehend under this head a very great number of offences. Such are, obtaining money or goods under false pretences, embezzlement, uttering bad money knowingly. One species of fraud, the concealment of his property by a debtor, has been the subject of specific enactment An Ordinance of the States, confirmed in Privy Council, inflicts imprisonment, for three months at the least, and two years at the most, on any one who, being imprisoned for debt or having placed his property in the hands of the law, shall cause the deterioration of such property. Any one aiding is subject to the same punishment, and to the payment of damage to the extent of the loss. Punishment to the same amount is imposed on any person who shall damage his heritage when he is about to lose it by a judgment, and upon such as aid him.

The offence of "selling by false weights or measures, or with weights or measures not marked or stamped by the Viscount or Sheriff," is noticed by Messrs. Pipon and Durell, who refer to the Grand Coustumier and the Gloss. It was anciently punished by fine and imprisonment, being considered analogous to a simple larceny. The Code of 1771 contains regulations on the subject, which are enforced by fines of ten livres for breaches of the several rules: and it seems to be understood that this has by implication repealed the customary law.

Adultery is punishable in Jersey by imprisonment and hard labour. Messrs. Pipon and Durell refer for this to Ordinances made by Royal Commissioners

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in the reign of Queen Elizabeth. These Ordinances, however, are not law in Jersey, as they never were sanctioned in Council: and the law on this head seems to have been created by the Court. No trace of it in the ancient law was pointed out to us. From a passage in Terrien (xii. 14.) it would appear that the customary law at one time punished adultery if the injured husband or wife preferred the complaint, but not otherwise. This accords with both the ancient and modern French law: whether Terrien had any other authority for inserting such a principle in the Norman custom we cannot tell.

Messrs. Pipon and Durell state that bigamy or polygamy, when without excuse, is punishable by death. This law they merely take from the manuscripts of their predecessors; and they suppose it to have been adopted from some writers on the reformed custom of Normandy, "strengthened by the statute of 1 James I." No instance of any punishment for the crime was known to those writers, nor to the gentlemen who gave evidence before us.

Incest, which is defined to be a criminal connection between parties in a direct line, or between brother and sister, is said, by Messrs. Pipon and Durell, to be punishable by death. This law, also, they consider to have been adopted from commentators on the reformed custom: and they refer also to the Mosaic law. They add: "We find by an ancient act of the Royal Court in 1586, as though this crime was then held to be punishable by the stocks, and whipping on three days repeatedly; but this might be considered to be adequate, when the crime was committed by persons in a remoter degree of affinity." This leaves the offence and punishment quite undefined. The evidence given to us appears to shew that, when the offence takes place in the direct line, it is still, in strictness, punishable by death; and that it would be punished, but more lightly, even if it took place between uncle and niece. In 1823, a man was found guilty of having had criminal intercourse with two step-daughters: he was imprisoned for six months, for the last eight days of which he was to be kept to bread and water, fined 50*l.* sterling, with costs, and banished for five years from the termination of the imprisonment.

Unnatural offences are said, by Messrs. Pipon and Durell, to be punishable by death. The writers refer only to the commentators on the reformed custom and the Mosaic law. The offence is now punished under a law of the States confirmed by an Order of Council of 1799, by which the offender "sera puni de mort, et souffrira le même supplice, les mêmes confiscations et forfaitures de ses biens, que la loi inflige présentement sur ceux qui sont convaincus de quelque crime capital."

The 80th chapter of the Grand Coustumier, referred to by Messrs. Pipon and Durell, speaks of "recepteurs q̄ receptent les foriurez les forbanis, et les dānez, & ceulx qui se defuyent a venir a la paix du duc qui ont este appellez." "Ils doibuēt p'dre to' leurs meubles a la volunte au duc et au bailly. Et se ilz nont meuble, ilz doibuent estre chastiez p' longue prison." And, afterwards, in the same chapter: "Les consentantz aux larrons en leurs larcīs, & ceulx qui les receptent doibuēt estre punis en aultre maniere, car silz en sont attaintz, ilz seulent en Normēdie emporter telle peine comme les larrōs mesmes: et aussi tous leurs parsonniers & consentans de leurs mesfaictz." An Order of Council on this subject, dated 1635, confirmed by the Code of 1771, inflicts the punishment of fine and imprisonment on accessories to murder, on such as, after the commission of felony ("en felonie après le crime commis"), receive or favour criminals before their conviction, or aid in the escape of criminals after proclamation for their apprehension, or break prison, or assist such delinquents.

It is usual, in the act of accusation, to charge the party in the alternative, that is, with having committed the offence or assisted in the commission; a practice which appears to us preferable to that prevailing in the English law, this latter (according to modern practice) discountenancing the double charge, and thus not unfrequently failing to attain the justice of the case.

For the law as to self-murder, Messrs. Pipon and Durell refer to ch. 21 of the Grand Coustumier, which inflicts forfeiture to the Sovereign of the chattels of such as kill themselves, or die excommunicate or "desesperez," that is, who, having been dangerously ill for nine days or more, refuse to confess and com-

municate. The forfeiture is still the legal result of self-murder; and the body is not to have Christian burial. But this head of law is practically extinct, as the jury on the levée de corps (answering to our coroner's inquest) invariably find madness.

Usury was formerly punished by forfeiture of the chattels of the offender to the Sovereign. (Gr. Coust. ch. 20.) This offence, as Messrs. Pipon and Durell point out, consisted in taking any profit for the use of money or other things lent. The penalty, however, was inflicted only, as we understand the chapter referred to, after the death of the usurer, and then not unless he had committed the offence within a year and a day before his death. The writers cite Terrien (xii. 22.) to shew that, afterwards, it was not an offence to take reasonable interest: but we doubt whether Terrien is speaking of the Norman custom. They add that, in their own time, usury would consist in taking more than 5 per cent., and would be punished by cancelling the usurious contract, and by fine according to the circumstances of the case. The code of 1771, confirming a law of 1714, fixes the maximum of legal interest at 5 per cent. In a recent case, the Court annulled the debt. The present law is evidently quite unconnected with what we find in the Coustumier.

For the law on slander, Messrs. Pipon and Durell refer to the 86th chapter of the Grand Coustumier; which, however, is much more full upon the subject than would appear from the passage which they cite. The "q̄relle qui naist de mesdict" is a personal querelle arising from dict as opposed to faict. These querelles arise from the "laidenges" which one man utters of another. They are either criminal or simple. Criminal are those where, if the slander had been true, he of whom it is uttered would have deserved to lose life or limb. When the party complained of confesses or is convicted, "la iustice luy doit faire grefuemēt amender par le chatel: et si doibt faire amēde a celuy q'l a laidenge: si que il se prēne p' le bout du nez, et die De ce q̄ ie tay appelle larron ou homicide ou de ce dequoy il est attaint, ie ay menty: car ce crime nest pas en toy. Et de ma bouche dont ie le dis ie suis mēsongier. Et ce doibt estre faict en assise ou en pletz, ou en eglise a jo' solennel: affin que il appaire que le vice que il luy mist sur: ne soit pas en luy: pource q̄ celuy q̄ luy dist sen recōgnoist a mēsongier." The Gloss (b.) adds that the party so declaring becomes infamous and inadmissible "a tesmoignage." For simple laidenge, the punishment appears to have been the same, except that the amends to the party complaining was made by the slanderer saying "sīplemēt q̄ la villanie q̄ il luy dist p' folie, nest pas en luy." In the case of the laidenge criminal, it was open to the defendant to offer to prove the truth of the slander, if he would have been entitled to make suyte for the imputed crime, as if the imputation were that the plaintiff had murdered the defendant's father.

Messrs. Pipon and Durell state, as to libel, merely that it is "punished with greater severity, as by fine and imprisonment, with damages to the party injured."

The modern law, in cases of slander, is very analogous to that which we find in the Grand Coustumier. The proceeding is by a cause en ajonction, which is of a mixed criminal and civil kind. We shall describe it more fully hereafter: at present it is enough to state that the satisfaction sought is double, a punishment as between the Crown and the defendant, and damages as between the parties.

A libel against a public functionary is also the subject of a cause en ajonction, of rather a more formal kind, in respect of the nature of the process, than a cause en ajonction for slander. But it is singular that for a libel against a common individual a proceeding en ajonction never takes place; and it is doubted whether it can do so legally, though for mere words spoken it may. A party always resorts to a purely civil action for libel; and he may do so for words spoken.

The amende to the party is now made by way of pecuniary damages; that by way of confession of the falsehood is seldom or never asked. If granted, it would probably no longer be in the form prescribed in the Grand Coustumier. It was, however, so inflicted, as late as 1719, in the case of a man named Piton, who had spoken injurious words of the Lieutenant Governor. The Court condemned him, "considérant l'énormité du fait, à démander pardon à genoux à Dieu, au Roy, à la Justice, et à la partie offensée, et à se prendre par

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le nez, et à reconnoître qu'il avoit malicieusement menti, ce qu'il a effectué, et est de plus, le dit Piton, condamné à une amende qualifiée, qui sera applicable à la réparation de la prison, et en outre à retourner en prison pour être là détenu, les fers aux jambes, l'espace d'un mois, au pain et à l'eau, pour être ensuite libéré."

It does not appear that a purely criminal proceeding is allowed for either private slander or private libel.

Messrs. Pipon and Durell, after enumerating the offences above mentioned, refer generally to prohibitory laws imposed by the code of 1771, by other Orders in Council, or by Act of Parliament. These are generally enforced by pecuniary penalties. We do not think it necessary to describe them more particularly; they relate for the most part to local or fiscal regulations, and, having been the subject of express enactment, are sufficiently definite.

We shall enumerate some other offences, which are not expressly mentioned, in the Statement of Messrs. Pipon and Durell.

Piracy is not punished as a specific crime; but it would almost necessarily comprehend some other crime punishable by the law of Jersey.

Assaults, with intent to commit particular crimes, are not classed as in the English law. The intent is specified in the act of accusation, and is there, in legal effect, a description of circumstances aggravating the assault. When the intent is very heinous, the proceeding is criminal, and may subject the criminal to transportation, as in the case of attempt to murder. In cases of slighter assaults, there may be a cause en ajonction of the more formal kind. But the line of distinction is very indefinite: and there is also the purely civil remedy for assault. Other offences, specifically distinguished by the English law, are here merely species of assault, as forcible abduction and forcible entry.

Other offences are cognizable under a power, which the Court seems to assume, of punishing generally whatever appears to be in its nature offensive or criminal. To this, it seems, we are to refer the law on coining (which has been punished here only since it has ceased to be treason in England), sedition, misconduct of officers, returning from transportation or banishment, provoking a breach of the peace, nuisances, brothel-keeping, indecency, unchasteness, solicitation of chastity. For these the Court imposes punishments in its discretion, varying from transportation to imprisonment and fine.

Prison breach is punishable, under the clause of the Code of 1771, already cited, by fine and imprisonment.

Tumultuous assemblies, to the number of twelve or more, are punished by a fine of 200 livres, under a law of the States passed in 1797, confirmed by Order in Council.

We may mention, in concluding this summary, that the more serious offences are now called "crimes," and the less serious "délits." The line between the two is not drawn very strictly. Offences against express enactments are commonly called "contraventions."

The result of this examination into the present state of the Criminal Law of Jersey appears to us to be that, except in the case of those lighter offences, and the few more serious ones, which have been the subject of specific enactments, neither the definition of crimes nor their punishment rests upon any authority which can be deemed permanent for the future, or even certain for the present. The offences now punished are scarcely in a single instance classified according to the ancient law; nor have there been substituted for this, either direct legislative provisions, or new practical principles capable of being distinctly ascertained or possessing any assured stability. In other countries, where the penal system has not been reduced to a code, the definitions of offences, and the punishments by which they are visited, have become perfectly known from a long course of precedents, carefully recorded, constantly

referred to, and furnishing a system as well understood, if not as scientifically arranged, as can be constructed by a formal code. Law so laid down is fixed till a change is made by the legislative power, openly announced, and asserting an equally positive rule. But, in the law of Jersey, the practice which innovates on the custom introduces in its stead nothing which is not equally liable to change. The evil is not mitigated, but aggravated, by a nominal reference to the works which are the supposed depositories of the ancient law. For, wherever the law, as there exhibited, differs from the law as practised, a reference to it amounts in effect only to the recognition of an additional disturbing force. The practice, which is now constantly prevalent, of referring to English legal works and precedents as authorities, seems indeed to have become almost the only practical mode of introducing fixed principles into the criminal law of the island.

We think it not difficult to point out the causes which have produced this state of things.

In the first place, the Royal Court, till within the last eighty years, possessed the power of legislation. The Order of Council of 1771 expressly put an end to this power. It has, indeed, been suggested that the variations of the law may have been produced by express enactments of the Royal Court, made at times before the fire of 1503 which destroyed the records. We think this very unlikely. We find no important changes of this sort introduced during the three centuries for which the records are preserved; and, as to some changes, we know that they are much more recent. But it is probable that, while this legislative power existed, the members of the court would not feel very strongly the necessity of adhering to the actual law in particular cases, when they knew that the general law itself was fixed only as long as they chose to permit, and that they might at any time introduce an absolute change. When the same body is judicial and legislative, the natural consequence is that no strong sense is entertained of the importance of adhering, in the administration of law, to principles more settled than those which regulate its enactment. We may venture to point out that a similar result may be observed in the Courts of Westminster Hall, where rules are the least constant within the limited province in which the Courts are compelled to create a law for themselves; for instance, on questions of mere practice, and on applications for a criminal information, or for a mandamus. Now, this laxity of principle having been once admitted into the habits of the Royal Court of Jersey, a removal of the original cause would have little effect in changing the practical principle, especially in the case of a numerous tribunal, the members of which were replaced successively and repeatedly, at distant intervals of time.

Next, we have no doubt that the popular nature of the tribunal has contributed to unsettle the law. The Jurats are chosen under a system of election in which the suffrage is very widely extended; and, as members of the States, they are expected to take an active share in the struggles between contending parties. The persons thus selected have, therefore, seldom received any legal education; other requisites are more valued. It results almost inevitably that they must often be prompted to act upon their own individual notions of justice, instead of ascertained rules of law. A strong instance of this occurred lately upon a conviction for murder, when two of the Jurats, avowedly from a dislike to capital punishment, proposed to pass a sentence of transportation for life, though no punishment of this crime other than capital has ever been recognized by the law of Jersey. Indeed, the changes in the law have, for a long time, been almost invariably from more to less severe. One exception, the introduction of transportation, is less strong than at first sight it appears to be; for transportation is often inflicted in cases where formerly the sentence would have been, not banishment, but loss of life or limb. The tendency of the law in this direction, though honourable to the feelings of those who have administered it, is nearly conclusive evidence that the cause which we are now pointing out must have been one materially contributing to the variation and inconstancy of the practice. Nor is it reasonable to expect that individuals, called upon to act judicially without previous training by legal study or habits, should not be more keenly alive to what may appear to them the expediency in the particular case before them than to the paramount importance of acting on fixed principles of law.

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Another cause of the unfixed state of the law is to be found in the rarity of recorded precedents. The law now, as we have shewn, rests almost exclusively on the modern practice of the Royal Court; but the number of decisions is small; and these, as we have mentioned, are not reported so as to furnish adequate means of instruction in the principles recognized by the Court. The annual number of offenders tried by the Royal Court, on an average of ten years, is only 137, of whom 50 submitted in the first instance. There is a record of every cause; and occasionally this contains the ruling on some disputed point. But the grounds of the decision never appear otherwise than by a very brief and technical recital of the view which the Court takes; no detailed judgment, showing the reasoning which has led to this view, appears; nor are the arguments of counsel set forth. It is almost impossible that decisions, so few in number, so slightly reported, and not published at all, can afford a foundation for a fixed system of law.

The inhabitants of the Island have, we think, a right to ask that this state of things should not remain. And it appears to us that it may be remedied with little difficulty, and without any innovation so great as to produce any serious or durable inconvenience, or shock any feelings or even prejudices.

A definite system of penal law ought undoubtedly to be laid down: the question is, what that system should be. The history of codes teaches us generally that no language can anticipate the variety of cases to which the law is to be applied, and that a course of precedents, more or less copious, must be passed through before the system acquires a practical certainty and precision. We have already pointed out that precedents in Jersey are not numerous or well recorded; and we see no reason for expecting any material change in this respect. The proposed alteration should therefore, if possible, be one which will furnish the Criminal Court with authoritative decisions, and enable them to appropriate to themselves the experience of tribunals of more extensive practice. For this purpose, the most efficient means appears to be the adoption, with such modifications as may be thought advisable, of the general criminal law of some larger country. The French Criminal Code has already been in action for a considerable period of time, and has been explained by numerous decisions which are easily accessible. But an objection to adopting it in Jersey seems to arise from its dissimilarity to the present, and even ancient, law of Jersey, and from the comparative rarity of occasions in which it has been cited in the Royal Court. The English criminal law is abundant in reported decisions: but it is not reduced to the form of a code. It is, however, well defined by practice: and that practice is now constantly referred to in Jersey.

It appears to us, therefore, that the States, if so inclined, might easily take a step which would at least place the criminal law of the Island on as steady a foundation as that of England. An enumeration might be made of the felonies and misdemeanors cognizable by English law which it was thought fit to punish in Jersey. These would comprehend every offence not provided for by specific enactment. Each might be strictly defined by the words to be found in any approved digest of English criminal law; and it would be understood, without direct enactment, that all the authority and reasoning upon which such definitions had been founded, or by which they had been explained, might be referred to in the Court of Jersey exactly as in the Courts of Westminster Hall. To avoid any doubt on the subject, the new code might recite that the language and provisions of the old Jersey criminal law had in many instances become obsolete, and that the more modern criminal law, so far as not introduced by express enactment, was not sufficiently defined for the purposes of justice, and that it therefore became advisable to lay down the law in language conformable, as far as possible, with the language used in the Courts of England. Care would of course be taken that no expression was used rendering any authority binding on the Court in any stricter sense than that in which authorities are held binding in our own Courts. And, where any law noticed in the English books appeared not conveniently applicable to the Island, it might be omitted. The punishments might be the same in kind as those in the English law, but more or less severe in the particular cases, as the States might think advisable. The new law should distinguish between offences which are triable by the enquête and those which may be disposed of summarily.

We are persuaded that a law of this kind, sufficiently definite for all practical purposes, might be drawn up in a few hours. The innovation, we believe, would not be felt. And we think it highly important that this improvement should come from the States themselves.

If the labours of the learned persons intrusted by Your Majesty with the revision of the English criminal law should terminate in the compilation of a criminal code, it might be adopted, in whole or in part, by the States in framing a criminal law for Jersey. But we do not think that the possibility of this result suggests any reason for delaying the proposed change. The criminal law of Jersey may easily be constructed on the language of the English criminal law, as now existing: and, if an English code should be afterwards produced, it would probably be, for the most part, a digest of the existing law; and a new Ordinance of the States might, in a few sentences, adopt its provisions, so far as was thought right, without any embarrassment being produced by their former Ordinance.

We reserve to a later part of this Report the suggestions which we have to offer with respect to the tribunal which is to administer the criminal law, and at this place will merely remark that we consider the present Court unlikely, from its nature, to conduce to the stability of any system of law which may be introduced.

We now proceed to state the result of our inquiry into the constitutions and powers of the Tribunals and Authorities charged with the execution of the Criminal Laws in Jersey. This part of the inquiry necessarily comprehended an investigation into the course pursued in the prosecution of offences, or what is ordinarily termed the Criminal Practice.

It is remarkable that the details of the practice have retained more of the features of the ancient customary law than can be traced in the laws themselves. We think it, however, unnecessary to offer a minute account of the ancient practice, but, upon this point, shall confine ourselves to a short abstract of the ancient suyte de meurdre, which will, we believe, be sufficient to show the general nature of the old system.

From the 68th chapter of the Grand Coustumier, and from the Gloss there, the ordinary course appears to have been that of a complaint by the son, or a near relation, of the murdered party. "R. se plainct de T. q̄ a meurdry son pere felōneusemēt en la paix du dieu & du duc que il est prest de prouuer & de luy faire congnoistre en une heure de jour." On denial by T., and his offering his gage, gages were taken, first of T. (le defendeur) and then of the accuser (l'appelleur): and each gave pledges to carry out the law ("de mener la loy;" that is, according to the Gloss, "de poursuyr et soustenir la loy;" according to the Latin translation, "de lege deducendâ"). The two were then kept in prison, but might be bailed to sufficient keepers, who should produce them, dead or alive, on the day appointed for the combat. On that day the parties appeared immediately before noon, and the words of battle (the issue joined) were recorded by the authorities ("par la justice"); and these were to correspond with the words of charge and denial taken when the gages were given. Four knights attended. The ban du duc, or proclamation, was made against aiding either party. The champions having declared their christian names, and professed their belief in the Trinity and the faith held by the Church, then swore to their words of battle, and that they had not prepared themselves with sorceries. Their arms were then given to them; the ban du duc was again proclaimed; and the combat ensued. The defendant had the victory if he could maintain himself till the time of the stars appearing, which time was to be ascertained, according to the Gloss (k.), by the artificial, not the natural, day; the words of the appelleur "en un heure de jour" were in that case not made good. The Gloss adds that, when either combatant yielded or was vanquished, he was sent to the gibbet.

This suyte could be made only where certain indicia (enseignes) of the murder were discovered.

If there were no one to make suyte of murder, and a party was commonly suspected, he was to be seized by "la justice" (the name still used to designate the authorities conducting criminal process), and put in prison for a year and a day, with little to eat and drink, unless, in the meantime, he con-

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sented to undergo the enqueste du pays. At the end of that time, he seems to have been liberated, according the law of the Grand Coustumier. But the Gloss, probably treating of an altered state of things, adds that, while under arrest, he might be tortured, more or less in proportion to the clearness of the proof against him, his bodily strength, and with regard to his reputation. This, however, is described as not a part of the ordinary criminal process, but as extraordinary. If the party confessed, judgment passed: but, according to the Gloss, he could not demand the enqueste as a matter of absolute right; for la justice might, at discretion, refuse the enqueste and continue the process by torture: and, at the end of the year and day, he was not necessarily to be released, the language of the Grand Coustumier meaning only, as the Gloss interprets, that he was not to be released before that time.

If he submitted to the enqueste, la justice was to summon such as were deemed likely to know anything of the murder, from whatever place they came; and they were to come suddenly and without notice of the cause of summons, lest they should be tampered with. These persons, called the men of the enqueste, were to be called separately, by the bailiff, before four knights being free from suspicion; they were to enquire diligently whether the prisoner had committed the murder; and what they said was to be taken in writing. The prisoner was then brought before them, and was asked whether he would challenge any. If he showed good cause for challenging any, no account was had of those who were challenged: a challenge without cause shewn had no effect. After the opinions, separately taken, were duly recorded, the whole number were called together, the record read to the accused, and they were then to acknowledge what they had sworn: "ilz doibuent recongnoistre q̄ ainsi ont ilz jure." What twenty agreed upon was taken as fact not to be contradicted. This was called the "enqueste du pays," or "enqueste de recongnoissant." (Gloss on Gr. Coust. ch. 87. e., h.) After the acknowledgment, judgment was awarded. The Gloss adds that the knights were to be subjected to challenge, as well as the men of the enqueste. The enqueste was to be by twenty four lawful men, not suspected of favour or hatred; and the sergent was to summon "les plus preudz hommes & les plus loyaulx quil pourra trouuer en lieu ou le mesfaict fut faict. et ceulx que len croit mieulx quilz sachent la verite du cas & comme il est aduenu." But the Gloss adds that it was not necessary that all the twenty four should be of the parish in which the murder was committed, and that in fact the usage was to take them from that parish and two others, of which one was ordinarily, but not necessarily, the parish whereof the party accused was a native, and the other was chosen "selon la discretion de justice." The Gloss also adds that, in spite of what the text lays down as to the necessity of the concurrence of twenty, the usage was that a bare majority could convict, which supplies a very strong instance of the changes made in the Norman Law between the time of the compilation of the Grand Coustumier and the year 1539. In the Stille de Proceder (fol. 70.) it is said that twenty men must agree on the guilt, in order to convict.

The Gloss on the 69th chapter of the Grand Coustumier points out the distinction between the men of the enqueste du pays, called also "jureurs," and the witnesses, or "tesmoings," who appear in the "preuve de certain." The course, on the enqueste du pays, was first to ask the jureurs whether they knew anything certain, and, if they answered that they did not, then what they believed; "cestassauoir de certain ou de credẽce." It seems clear that, down to the time of the compilation of the Gloss, no witnesses were called before the enqueste du pays: and this agrees with what is known of the early history of juries in England.

It appears, therefore, that the ancient criminal proceeding which was set in movement by the public functionaries took place when there was strong suspicion of crime, but no suyte by a private party. The functionaries to whom it appertained to act upon such suspicion were certain sworn officers of the Duke.

In the 4th chapter of the Grand Coustumier it is said that there were two classes of Justiciers, the higher and the lower. The higher comprehended the Masters of the Exchequer and the Bailiffs, the lower those who were under the Bailiffs. Of the higher class the Masters of the Exchequer were superior to the Bailiffs, the latter having no jurisdiction out of their several bailiwicks, and their proceedings being subject to the correction of the Masters of the Ex-

chequer. The lower class comprehended those who were below the Bailiffs. The Bailiff was called the Justicier of the country: his duty was to do right to the people, to keep the peace, to determine disputes, to destroy thieves, homicides, burners, and persons guilty of other misdeeds. He and all the lower justiciers were sworn to the faithful performance of their office. One duty of the justiciers was to arrest and put in prison parties who were denounced as culpable, either by common fame or the testimony of persons worthy of belief, which parties were afterwards to be submitted to judgment ("en apres par jugemēt doiuēt estre traictez"). These lower justiciers comprehended vicontes, serjeants of the sword, and beadles ("bedeaulx").

In the 5th chapter it is said that the viconte was to enquire diligently and in secret touching malefactors, as murderers, thieves, and those who did violence to maidens; touching treasons and other crimes; and those whom he should find, by the oath of unsuspected persons, to be guilty, he was to keep in prison to abide the enqueste, or till they were delivered by the law of the country; and the Gloss (b.) adds, that he might make informations and administer the question by torture. So, again, the serjeants of the sword, "doibuent justicier vertueusemēt a lespee & aux armes, tous les malfaicteurs & tous ceulx q̄ sont diffamez daulcun crime, et les fuitifs." The beadles performed duties of the same kind, but of a lower class. The Gloss (d.) adds that, of these justiciers, the Bailiffs and Vicontes alone were called Juges Justiciers, having certain judicial functions.

From the duties assigned to these officers, we collect generally the nature of the proceedings which, when the prosecution was in the hands of la justice, and not of a private party, preceded that stage at which the party might be subjected to the enqueste du pays. The sworn justiciers, including all the officers charged with criminal functions, were to seize and put in prison such as they found, from common fame or credible testimony on oath, to be guilty.

We shall now describe the present Criminal Court and its mode of proceeding, which appears to us to exhibit most of the features of the ancient form, though singularly changed in spirit.

We have already, in describing the Parochial Assembly, mentioned the Royal Court. We shall now speak of it and its various functionaries more fully, and, in some instances, must repeat what has already been said. It is the only criminal court in the island. It consists of a Bailiff and twelve Jurats, called Jurés Justiciers. The Bailiff (Bailli) is appointed by the Crown, and now holds during pleasure. He may name one or more persons to be Deputy Bailiff. He has a salary of 300*l.* with other fees. The twelve Jurats are elected for life from the natives of the island, by the rate-payers of the whole island. They must be possessed of property in land, producing rather more than 30*l.* per annum, in English money; and they may not be brewers, bakers, butchers or tavern-keepers. They may resign by leave of the Crown, or, in case of misconduct, be dismissed. This Court has, under different names, civil jurisdiction. In its character of a criminal court it either consists of the Full Court (corps de la cour), at which there must be at least seven present, besides the Bailiff or his deputy, or the Inferior Number (nombre inférieur), at which two at least, besides the Bailiff or his deputy, must be present. The Court sits for two terms, namely, April term, from 11th April to 5th July, and September term, from 11th September to 5th December: but, whenever a party is imprisoned, the Court will, if required, proceed with the case out of term.

This Court originated in the constitutions of King John, who (by sect. 1) "Constituit duodecim coronatores juratos, ad placita et jura ad coronam spectantia custodienda." By sect. 3, "Ii debent eligi de indegenis insularum, per ministros Domini Regis et optimates patriæ; scilicet, post mortem unius eorum, alter fide dignus, vel alio casu legitimo, debet substitui." It has been made a question whether this sanctions an election upon so broad a principle of suffrage as is now in use. Sect. 5 confers the criminal and civil jurisdiction: "Ipsi duodecim in quâlibet Insulâ, in absentiâ Justiciariorum, et unà cum Justiciariis cum ad partes illas venerint, debent judicare de omnibus casibus in dictâ Insulâ qualitercunque emergentibus, exceptis casibus nimis arduis, et" (or rather *ut*, as before pointed out) "si quis legitimè convictus fuerit a fidelitate Domini Regis

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tanquam proditor recessisse, vel manus injecisse violentas in ministros Domini Regis modo debito officium exercendo." The Justiciarii here spoken of are the Justices in Eyre, who formerly visited the Islands periodically. In the 7th section it appears to be taken for granted that, where the Justices did not act with the Jurats, the Bailiff would preside; and, in the 2nd section, the Bailiff is directed, in certain civil questions, "per visum dictorum coronatorum placitare." The presidency of the Criminal Court is not expressly given; the effect, however, of the constitutions has always been understood to be, that the Court, consisting of the Jurats presided over by the Bailiffs, has the same jurisdiction in criminal matters which the Bailiff alone had before the constitutions were granted.

Two Law Officers of the Crown, the Procureur Général and Avocat de la Reine, who respectively answer nearly to the Attorney General and Solicitor General in England, and are often called by those names, attend the Court; which, indeed, cannot act unless one of the two be present. They are appointed by the Crown, and hold for life. The Procureur Général has an annual salary of 100*l.* besides official fees, which may amount to as much more. He has a secretary called the Autorisé du Procureur Général, who has an annual salary of 12*l.* The Avocat de la Reine has an annual salary of 50*l.* Neither receive any fees for conducting criminal causes; but each may act for private parties in civil causes.

The other avocats of the Court, or barristers, are six in number; and no more can be appointed. They are named by the Bailiff, as vacancies occur. No qualification is required. In case of their non-attendance at certain seasons, the Bailiff has, it seems, the power of suspending or dismissing them: but this is not very clearly ascertained.

The Court has no regular attorneys: but persons called écrivains are from time to time appointed by the Bailiff, who perform certain functions in the Criminal Court, which will be presently described, and which give to the écrivains, when so acting, rather the character of subordinate clerks of the Court than of attorneys acting for parties.

The Viscount (Vicomte) is appointed by the Crown, and holds during pleasure. His office in many respects resembles that of the English sheriff. He may, and frequently does, act by deputy. He has an annual salary of 100*l.*, with considerable fees of office. The description of his office in the Grand Coustumier (ch. 5.) shows that this functionary had formerly much more extensive powers and duties than at present, both judicial and as a principal officer of police. The constitutions of King John have probably diminished them in the former respect; and, in the latter, many duties that once belonged to the Viscount are now exercised by the constables.

The Clerk, or Registrar, of the Court, called Greffier, is appointed by the Bailiff for life. He has under him a clerk, or Commis au Greffe, who is also appointed by the Bailiff.

The two Dénonciateurs, or officiers de justice, act under the Vicomte. They are appointed by the Bailiff.

There is also an usher, "huissier," appointed by the Bailiff.

The Police may be considered, in some sense, as officers of the Royal Court. Each parish has one constable, elected for three years by the rate-payers of the parish. Under him are in St. Hélier's 4, and in each other parish 2, centeniers. who are also elected for three years, by the rate-payers. These are subordinate to the constables. Each parish is divided into districts called vingtaines. The number of these varies in the different parishes. There are 7 in St. Hélier, 6 in St. Ouen and St. Sauveur, 5 in St. Laurens, St. Pierre, St. Martin, and La Trinité, 4 in St. Brélade and Grouville, 3 in St. Jean and St. Clement, and 2 in Ste. Marie. To each of these vingtaines belongs a vingtenier, who is of an inferior grade to the centeniers. He is elected by the Parochial Assembly, and holds office for four years in St. Hélier's, and for seven in the other parishes. There are also, in each parish, officers of a grade inferior to the vingteniers, called officiers du connétable. These also are elected by the Parochial Assembly. There are 24 in St. Hélier's, 15 in St. Brélade, and 12 in each of the ten other parishes. Certain criminal functions also belong to a summoning officer called the Prévôt, who is furnished in each parish by the tenants of the Royal fees or manors of the parish. In St. Ouen's and St. Clement's

there are no such tenants; and the duties are there performed by the Prévôts of St. Mary's and Grouville. In some parishes an officer called the Sergent de la Reine is furnished by the same tenants: he is an assistant to the Prévôt.

The criminal cases which are brought to the Royal Court are either purely criminal or of a mixed criminal and civil kind. Of those which are purely criminal, some are prosecuted by the intervention of a jury, and some without it; the former of these two classes comprehends all the heavier offences, the latter those which are considered sufficiently light to be disposed of by a summary proceeding. The line between the two is not very definitely drawn; but it may be said generally that, in all cases where capital or corporal punishment, transportation, hard labour, or lengthened imprisonment, may be inflicted, the case goes before a jury: the summary process is applied in cases of the less grievous assaults, breaches of the peace, and the like.

We shall first describe what takes place when the case goes before a jury.

The first step, upon an offence being committed, is regularly taken by the Police. The constables and centeniers may act throughout their own parishes, the vingteniers only in their own vingtaine, or in the case of their witnessing the commission of an offence; the officiers du connétable only where they witness the commission of the offence. But both vingteniers and officiers de connétable may act in aid of the constable, whether they have seen the offence committed or not. The constable or centenier collects all the information which he can, arrests the accused party, and lays a Report (through the Procureur Général) before the Court, bringing in the prisoner at the same time. According to the Grand Coustumier and Gloss (ch. 6, q.), the regular course is to bring the arrested party before the Bailiff within a day. This, however, is in practice frequently postponed for several days. The prisoner is brought in at a sitting of the Inferior Number, in what is called a Cour de Samedi, as it more ordinarily sits on the Saturday. The Report contains all that the officer has heard, including often much which is hearsay and otherwise not strictly fit evidence for a jury. Sometimes, the Report being placed in the hands of the Procureur Général before the prisoner is arrested, that officer (except where he is represented by the Avocat de la Reine, which he may be in all cases, if absent) lays the Report before the Cour de Samedi, and requires its order for compelling appearance. The order is then granted of course. It is of three different kinds, according to the nature of the offence. In the most serious offences a Décret de prise de corps issues, empowering all parties to seize the accused, and forbidding any from sheltering him. In less grave cases an Acte de saisie issues, under which the vicomte or a dénonciateur arrests the offender, or takes security for his appearance. In light cases a signification issues, which is a mere summons, and is served by the same officers. This last, however, is seldom or never resorted to in cases which are brought before a jury. On some very rare occasions the Procureur Général acts without a Report, and demands the order ex officio. In strictness the police have no power to take an accused party to the public prison without the warrant of the Bailiff or certain of the Jurats whom the Bailiff authorizes to grant such warrant; and therefore, in default of such warrant, the prisoner regularly would be in the private custody of the officer. But a common practice is to place the party in the prison and obtain the warrant afterwards. The constable or centenier sometimes takes bail for the appearance of the party arrested; but this is apparently an exercise of authority not strictly legal. The advice of the Law Officers of the Crown is sometimes taken as to whether the case is one in which bail should be allowed. When bail is taken, the fact is mentioned in the Report of the constable; and, in default of appearance, the Court, on reading the Report, condemns the bail to pay the penalty. The parties who are bail must possess real property in the island. Sometimes the prisoner is allowed to deposit a sum of money as a security for his appearance, instead of bail being taken: but his own recognizance is not formally taken.

On the appearance of the accused before the Cour de Samedi, the Procureur Général reads the police officer's Report (if there be one, which is almost invariably the case) and the order (if any) under which the prisoner has been taken. He then puts in his own accusation, which has been framed entirely on the Report of the police officer, previously furnished to him. This answers to the English indictment, though the rules as to its framing are somewhat less

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precise and more reasonable than those of our law. The act of accusation gives the prisoner rather more information than our indictment, and, at the same time, is not fettered or embarrassed by such minute technicalities. After the act of accusation has been put in it cannot be altered. The prisoner is then called on to plead. If he cannot afford to employ an advocate, the Court selects one for him, who acts gratuitously; and this duty, as we had the means of personally observing, is discharged with great zeal and ability. But, if a party choose to pay for his own counsel, he may do so, and may have as many as he pleases; only one, however, is allowed to speak. The prisoner then pleads under the advice of his counsel. If he pleads Guilty ("coupable") the plea is recorded, and the Procureur Général states his conclusions, that is, his view as to the law and proper judgment. The prisoner is then sentenced, unless the offence be of so grievous a kind as to make it fit that judgment should be given by the Full Court. On his appearing before the Full Court, when the case has been referred to them, the sentence, after the conclusion of the Procureur Général, is passed; but the plea of Guilty may be retracted at any time before sentence. If he refuse to plead at all when charged in the Cour de Samedi, a plea of Non coupable is recorded. If he plead Non coupable, he is "constitué prisonnier," or else bailed by leave of the Court; and the Procureur Général has leave to produce witnesses, "d'informer." In some few cases the prisoner denies the legal propriety of the accusation and demurs, when the objection is discussed. If the objection fail, the prisoner may still plead Not guilty. The whole of the proceedings in any of these cases are recorded.

The Inferior Number of the Court afterwards sits to receive the evidence of the witnesses for the prosecution, called Informateurs. The prisoner and his counsel are present. The witnesses are sworn; and their evidence is taken down in writing by the écrivains appointed for the purpose. The counsel for the prisoner cross examines; and the result is also taken down in writing by the écrivains. When the Procureur Général has called as many witnesses as he thinks necessary, the witnesses for the prisoner are called, examined by his counsel, and cross examined by the Procureur Genéral. The evidence is taken down in writing as before. Every question and answer, on each side, is read aloud after it is taken down; and either party may object to the way in which it is recorded. On such objections the Court decides. Finally, the witness signs the examination, after which no alteration can be made. The evidence, as taken down, is expressed in the third person, and thus does not precisely represent what is said. At each examination, the prisoner repeats his plea of Not guilty. The witnesses on each side are summoned at the instance of the Procureur Général, by the Vicomte and his officers. Either party is entitled to introduce fresh witnesses, "innover," indefinitely. At the close of each sitting, the whole proceeding is recorded. Several of these sittings often take place, until neither party has more witnesses to call. At the close of each sitting the prisoner is remanded, and the Procureur Général has leave "d'informer plus outre," if there are more witnesses to be called, and the prisoner is remanded. The proceedings of each day, including the evidence given, are recorded. If any witness is about to leave the Island, or unable to attend the Court, the Vicomte, at the instance of the Procureur Général, is ordered to take the evidence forthwith. This is done in the presence of the parties. The evidence so taken then stands on the same footing as that taken before the Inferior Number. If witnesses who have been summoned fail to appear, they are fined; and the Vicomte is ordered to seize them and detain them in custody, unless they give security for their appearance.

If any question of law arise, upon these sittings of the Inferior Number, the party dissatisfied with the decision of the Court has the right of appealing to the Full Number.

The evidence being closed, the Procureur Général directs his warrant to the constable of the parish in which the offence has been committed, directing him to summon a sufficient number of the officers of the Police of his parish to form an enditement, "pour passer comme hommes d'enditement à la charge ou décharge de A. B." This enditement is in fact a jury of thirteen, made up entirely of the Police. Formerly the enditement was taken from the parish to which the prisoner belonged. One of the thirteen is the constable, or in his absence, a centenier; and he acts as president or foreman. It is understood that no police officer who has been a witness, or actively concerned in the pro-

ceeding against the prisoner, should serve on the enditement. The Full Court sits, the Bailiff or his deputy presiding. In all proceedings, both of the Inferior Number and the Full Court, questions which arise for the ruling of the Court are decided by a majority of the Jurats. In case of difference of opinion, the majority decides; if the opinions be equally divided, and then only, the Bailiff has a vote. According to the present practice, the Bailiff, unless asked by the Jurats, which rarely takes place, does not even offer to them his opinion upon questions of law; but, in this respect, the practice appears to have varied at different times. The enditement appear before the Court, but are not sworn, it being understood that they are acting under their oath of office. The prisoner may challenge any for good cause. The Report of the constable, the accusation, and the evidence are read to them; they do not see the witnesses. They then are addressed by the counsel for the prisoner, and afterwards by the Procureur Général. The Bailiff then sums up the evidence. The enditement then retire, accompanied by the Viscount, who takes with him the written evidence. If they agree, they return into Court, and the foreman pronounces the verdict. If they disagree, the Bailiff and Jurats receive, separately and secretly, the opinion of each, and the Bailiff pronounces the resulting opinion of the majority, a bare majority sufficing to acquit or condemn. The form of the verdict is, that the party is *Plutôt innocent que coupable*, or *Plutôt coupable qu'innocent*. The prisoner, if acquitted, is immediately discharged. If he is found Guilty, he is said to be "criminellement endité." He may then demand the benefit of the grande enquête; in which case he is remanded. If he submits to the verdict of the enditement, the Procureur Général states his conclusions; the counsel for the prisoner is heard in mitigation; and the Court decides on the punishment. The Bailiff then pronounces the judgment; which is to be entered by the Viscount. In the case of a capital sentence, time is allowed, before execution, to enable the prisoner to apply to the Crown for mercy; and transportation, as before shown, cannot be carried into effect without an order from the Privy Council.

The origin of this strange mode of trial sufficiently appears, we think, from what is known of the old mode of proceeding. It is manifest that, when the prisoner is criminellement endité, the proceedings have reached the stage corresponding to that at which, in ancient times, the prisoner was committed to prison for the year and day, unless he demanded the enqueste du pays. The constable and his enditement, consisting of police officers, answer to the vicomte and the sworn bas justiciers; and, in criminally indicting a man on the evidence of sworn witnesses, they act as the bas justiciers formerly acted. This shows why they are not sworn in the particular case, but are understood to act only under their oath of office, and why they are presided over by their constable or centenier. The whole of the examinations having formerly been understood to be conducted by the Police, a formal attendance of the witnesses would not be required for enabling this branch of "la justice" to decide upon committing the suspected party to prison; and this is probably the reason why the enditement now only hear the record of the evidence previously taken. The whole spirit of the proceeding is, however, changed, by this preliminary proceeding having come to be considered in the light of an actual trial of the guilt or innocence of the party charged. He is therefore now sentenced, unless he demands the grande enquête, instead of being left for a year and a day in prison, or tortured, as in the later Norman law. The same change in the view taken of the proceeding accounts for the introduction of the right of challenge, and for the enditement never acting except upon the evidence of sworn witnesses, whereas the bas justiciers might (as we understand the old writer) proceed upon suspicion or common fame; and this change has apparently introduced the practice of requiring the attendance of twelve of the sworn officers, besides the presiding officer. The progress of the change may, to a certain degree, be traced. Le Geyt (vol. i. p. 251.) refers to a record of 1563, where it is stated that "*six* hommes sermentez rapportoyent que deux accusez étoyent plustost larrons que loyaulx." In this instance, as the Avocat de la Reine pointed out to us, the evidence was taken out of Court, and the arrest took place on the report of the enditement. In another instance, which Le Geyt gives, in 1611, the constable and "*six* sermentez" not being unanimous, the case was postponed; and, in a later entry of the same year, it is said, "que si les sermentez varient, il en faut douze pour enditer." Le Geyt himself, on examining the record, comes to the conclusion that "les sermentez sont des

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espèces de surveillants pour le magistrat civil." He adds, "Il se trouve une infinité de sentences et d'enquestes criminelles où l'on ne void aucune trace d'enditement. Les enditements ne sont que pour les cas douteux, et c'est aujourd'huy quelque chose de plus que ce n'étoit autrefois. L'endite n'étoit, pour ainsi dire, qu'une *accusation d'office,* et c'est à présent une espéce de sentence et de jugement de crédence sur toutes les preuves que la partie publique et particulière, s'il y en a, peuvent avoir produites. L'enditement passe après l'information, et l'enditement étoit ci-devant comme le premier pas d'un procès criminel, *du moins au dé faut d'un accusateur.*" Although the learned author does not himself suggest the analogy between this process and the ancient practice, the history of the proceeding seems to us to be established beyond doubt by the conclusion to which he comes, and even by the language which he has been led to adopt. We need not point out the many corresponding features of the English Grand Jury.

If this be the correct historical theory of the present practice, it will appear that the absurdities which now prevail are the result, not of forgetfulness or abandonment of the ordinary principles of justice, but of an attempt to carry them out, by introducing into a proceeding which was merely preliminary a character and principles properly belonging only to the final enquiry upon the guilt or innocence of the accused party. The same historical solution, and consequently the same excuse, seems to us to be applicable to the proceeding which we are next to describe, that before the grande enquête.

When a prisoner, upon being criminellement endité by the enditement, has demanded the benefit of the grande enquête, or, as the records call it, the grande enquête du pays, the Procureur Général summons, from the parish in which the crime was committed and the two adjoining parishes, a number of persons selected by himself, somewhat exceeding twenty four, to provide against challenges or absence. This is done by sending his warrant to the prévôt in each parish. Conformably with the principle laid down in the Grand Coustumier, the summons is made on the evening before the trial. The trial takes place before the Full Number of the Court; twenty four, if not challenged for cause, are sworn; there must be eight from each parish. The proceedings which follow are in all respects like those before the enditement, except that, unless twenty concur in finding the prisoner guilty, he is acquitted. In a recent instance the Court permitted a fresh witness to be called before the enquête; but the prevalent opinion seems to be that this was an innovation.

The reason why no witnesses are heard before this enquête, which, according to the original constitution, is the proper tribunal for deciding upon the disputed fact of the guilt or innocence of the prisoner, appears to be that, in ancient times, as we have pointed out, they themselves comprehended such witnesses as could be obtained. Since it has been understood that juries are to decide only on evidence produced at the trial, and not from their own previous knowledge, the evidence has been supplied by laying before the enquête all that had been laid before the enditement. Indeed, as the enquête in ancient times might decide, not simply from what they knew, but also from what they believed, it is very probable that the circumstances of suspicion, or the evidence upon oath, which had led the bas justiciers to commit the accused to prison, were ordinarily brought before the enquête du pays. The vestiges of the ancient course are, perhaps, still traceable in the oath of the men of the enquête, who are sworn, not to give verdict according to the evidence, but "que bien et fidellement vous rapporterez à la Cour ce que *vous pourrez croire en votre conscience.*" The four knights have disappeared from this proceeding; it has been conjectured that it was intended by the Constitutions of King John to replace them by the jurats. The entry on the finding of the enditement is now in the form following: "Partant le dit prisonnier demeure endité criminellement; et il a été renvoyé en prison jusqu' à ce que la dit Sieur Procureur Général de la Reine fasse convenir la Grande Enquête du pays, dont il a *demandé le bénéfice.*" But, so late as 1646 (and perhaps later), the form was, that the prisoner, "*pour purgation* du dit crime, *se submet* à l'enqueste du pays de 24 homes, de sa vie ou de sa mort." The change in the form is sufficiently accounted for by the history of the proceeding.

We proceed to describe the proceedings which take place, in cases purely criminal, where the Court acts without the intervention of a jury.

In these cases the accused party is brought before the Inferior Number, in the Cour du Samedi, as in the proceedings before described. The case goes on in the same way, down to the plea of the accused. If he plead Not guilty, the cause, on the motion of the Procureur Général, is sent to proof ("envoye en preuve"). Upon the Court sitting to receive proof, a list of the witnesses on both sides is given in, and inserted by the Greffier in the record. No witnesses can be afterwards added, on either side. All the witnesses summoned must be present when the cause is heard, unless the party summoning consent to their absence. In general, the witnesses are heard vivâ voce, and, if possible, all in the same day. When the Court sentences the accused to a fine higher than 5*l.*, there is an appeal to the Full Court.

It should be mentioned that, when the offence which is brought before the Inferior Number is created by a legislative act, the accused party is brought before the Court by an acte de saisie, or signification, issued on the application of the Procureur Général, if the punishment be, wholly or in part, imprisonment, or if it be a fine at the discretion of the Court: but, if it be a fine fixed by the law, the accused is served by the prévôt with a bill or summons from the Procureur; and, in this case, if he make default in appearance twice, he is condemned. The signification, and, if it is disobeyed, the acte de saisie, is the ordinary process in the case of offences not created by positive enactment, which are to be tried by the Inferior Number.

Another proceeding, purely criminal in its nature, is the levée de corps, which corresponds to the coroner's inquest in England. In the case of death under circumstances of doubt or suspicion, a report is usually made by the Police to the Bailiff, who issues his order to the Viscount. Should the Police not act, the Bailiff would issue his order at the instance of the Procureur Général. The Viscount selects a jury of twelve, who meet and are sworn. The Procureur Général attends. The jury view the body and hear witnesses; but these latter are not sworn. After the witnesses have been heard, the jury deliberate in private upon their Verdict, or Report, which is determined by the majority. They are afterwards called before the Inferior Number, and deliver in their Report. The Report, however, does not, as in England, form the foundation of a prosecution. For instance, if the verdict were Wilful Murder, the Court can still proceed only in the ordinary mode, already described, at the instance of the Procureur Général.

The cause en ajonction is a proceeding of a mixed civil and criminal nature, the Procureur-Général being joined, "ajoint," to the civil party. It is either by bill or remontrance.

The proceeding by bill takes place in cases of slander (not libel). The Attorney General, on being applied to, signs the bill as a matter of course. If he declined to do so, the Avocat de la Reine might sign it, and, in that case, the Procureur de la Reine might act as counsel for the defendant; and, when the Procureur Général signs the bill, the Avocat de la Reine may be counsel for the defendant. This is regulated by an order of Council of 1771. The bill is a summons to the defendant. The defendant appears and puts in his plea; and, if he denies the charge, the case is sent to proof. The causes en ajonction take precedence of civil causes, but in other respects are tried in the same way, before the Inferior Number. The plaintiff may regularly retain, as his counsel, the Crown officer who has signed the bill; and the Crown officer would then appear in a double character, that of advocate for the Crown and advocate for the party. But, latterly, the Crown officer who is ajonct has declined acting for the plaintiff as a private party in these causes, and the party employs another advocate. The sentence of the Court gives a fine to the Crown and damages to the plaintiff. When the damages exceed 5*l.*, there is an appeal to the Full Court. If the Court consider that there was no sufficient ground for the proceeding, it pronounces it an "ajonction frivole;" the consequence of which is that the plaintiff has to pay all the costs except those of the defendant's legal advisers, and also a fine of 12*s.* 6*d.*

The cause en ajonction by way of remontrance is resorted to in cases of libel against a public functionary, and of assault. The plaintiff presents a remontrance (or petition) to the Court, praying for the ajonction of the Procureur Général. The Procureur Général is heard: and the Court then grants or

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refuses the ajonction. If the ajonction be ordered, the Court directs that the defendant be arrested: he then either gives bail or is imprisoned. In other respects, the proceeding is the same as by bill.

It appears to us that scarcely any part of the criminal proceedings which we have described is such as to suit the present condition of the inhabitants of Jersey.

We have shown that the functions of the Police, in bringing a party before the grande enquête, are of a character entirely different from that which they formerly bore. The whole organization of the Police is, in fact, altered from that which formerly existed. The parochial system has taken the place of the regular system of subordinate officers which we find described in the Grand Coustumier; and we think that this change has been for the worse.

The first objection which presents itself is, that the functions of the Police are so distributed that the authority of the several officers is confined to districts unnecessarily small. The area of the whole Island is less than that of the smallest English county; and no reason appears to exist for confining the authority of any police officer to the particular vingtaine or even parish.

The next objection is, that the Police is made up of persons whose principal business is not the discharge of the duty imposed by their character of police officers, and who do not act under the constant superintendence essential to a well organized system. The constables in the parishes are generally gentlemen belonging to the higher ranks of society. In the most important parish, St. Hélier's, which contains nearly all the principal town, the constable is Mr. Le Sueur; in the adjoining parish, St. Sauveur's, which contains the rest of the town, the constable is Mr. François Godfray; both these gentlemen are advocates in constant practice. It cannot be expected that persons in this rank of life will devote themselves undividedly to the superintendence of the police force. Even the advantage which might be derived from the legal knowledge of these gentlemen is lost by the imperfect organization of the system. The centeniers, who are the officers next in rank to the constables, ought to consult with and report to their superiors; but this is very commonly omitted. The centeniers themselves are, for the most part, persons who follow callings requiring much of their time, and who cannot possibly have acquired a competent knowledge of their duty as officers of police. Some strange results have occurred. In one instance, a centenier of St. Hélier's had in his hand a forged bank-note, which had been traced to a party who said that he had received it of a person whom he did not know. The centenier proposed to this party that he should pay the amount to the holder, and that the note should be destroyed; and, this being acceded to, the centenier himself burnt the note in the presence of the two. We do not attribute this extraordinary action to any deliberate intention on the part of the centenier to prevent the detection of crime, but to an absolute and perfect ignorance of his duty. He did not, upon being examined by us, appear to have understood that there was other than a pecuniary question between two parties; and the importance of preserving evidence of the crime had, as far as we could judge, not suggested itself to him. This officer, nevertheless, had been centenier for three years, and a police officer of a lower rank for many years. A centenier of St. Sauveur's took upon himself to search the house at which a woman lodged, without any charge of theft having been made, merely because the son of a man, with whom the woman had been living, complained of his father having kept company with the woman. The constables were not consulted in either case; and it is scarcely possible that, if they had been, this conduct could have taken place; and indeed, in the latter case, the woman having been afterwards lodged in custody in the parish of St. Hélier's, Mr. Le Sueur, the constable of that parish, directed that she should be released for want of a proper charge, believing that the whole proceeding had been instituted with the view of preventing a marriage between the woman and the father. It is obvious that a better system is not likely to prevail in parishes where the constables have not the legal knowledge possessed by Mr. F. Godfray and Mr. Le Sueur. Another consequence of the defective organization of the system, and of the functionaries not being exclusively devoted to the duty, is, that the Police is almost wholly inoperative as a protective force. This is peculiarly important in St. Hélier's, a parish containing probably 28,000 inha-

bitants, about 25,000 of whom live in the town. The town itself is a port of very large commerce, frequented by persons from different nations, and much resorted to by individuals who have fled from their own countries for crime. There is no official watch at all; the streets at night are entirely unprotected, except by certain watchmen who are hired for particular districts by private subscription, who have no legal authority, and who, as Mr. Le Sueur pointed out to us, and as, indeed, might be expected, are inadequate to the prevention of crime. In some instances the police officers are tavern-keepers; thus exercising a calling which is positively inimical to the proper performance of police duties. In case of a breach of the peace, actual or apprehended, the party who is injured or endangered often does not know where to find an officer. The time required for a constant attention to the duty is, in fact, that which the present officers cannot spare, or reasonably be expected to spare. Mr. Chevalier, a centenier of St. Hélier's, who stated himself, as we believe quite truly, to be a very active officer of police, told us that he had occasionally been obliged to leave his house seven times in a night, which he appeared justly to consider a very severe tax upon his time and rest. But no one who was merely a police officer would feel his duties press sorely upon him in this respect: the officers appropriated to the preservation of the peace by night would, of course, not retire to rest during their hours of duty. Another result of the imperfect organization of the system is, that there are no places appropriated to the temporary confinement of persons apprehended. By law the parties cannot be placed in prison without a magistrate's warrant; the consequence is, that the police officers have now only the alternative of violating the law or of themselves providing proper places of custody.

Another objection to the present system of Police appears to us to arise from the character which the superior officers assume. The word "constable" conveys to English lawyers the idea of an authority much inferior to that which the constable, and, as acting for him, the centenier, constitutionally possesses. These officers have functions partly resembling those of our police magistrates. They may, in certain cases, take bail from a party arrested where the offence does not amount to felony; they can also bind parties to keep the peace. In numerous cases they assume the exercise of a discretion which in England would not be thought compatible with the duties of a police officer. In the case of an assault, the constable considers it part of his duty to inquire whether the assault has not been provoked by libel or slander, if that is alleged. In some cases they consider themselves authorized to decide as to whether a Report shall be presented, that is, in effect, whether a prosecution shall go on. We do not consider that any of this latitude of authority arises from usurpation; for it seems clear to us that the whole is in the spirit of the ancient institutions, which imposed on the bas justiciers the duty of searching out crime and committing such offenders as they thought proper objects of prosecution. But we believe that this confusion of functions now produces very serious evils, especially when connected with the objection to which we shall next advert.

This objection arises from the officers being, by the very constitution of the system, so much involved in what are in this Island called political disputes. It is not to be understood that this expression relates to disputes upon any of the constitutional or national questions to which, in other countries, the word political is appropriated. Little is heard, we believe, of such questions in Jersey: but the inhabitants of the Island are divided into two parties, which contend with the utmost vehemence, and, we are compelled to add, the utmost virulence, for the possession of power in the States and in the Parochial Assemblies. With these parties the Police are inevitably mixed up. One third of the States, the only part which is renewed by periodical popular election, consists of the constables. The Jurats, who constitute another third, are elected for life by the rate-payers; and the rate is fixed by the Parochial Assembly. Of this Parochial Assembly, as we have shewn, the Police constitute a necessary part. Besides this, the Parochial Assembly itself elects the vingteniers and the officiers du connétable, and the rate-payers elect the constables and the centeniers; thus producing, to a certain extent, a circle of self-election. It is true that many of the Police who are entitled by their office to form a part of the Parochial Assembly would do so merely in virtue of their property; but their official presence in the Assembly necessarily makes them the nucleus of a party. In St. Hélier's, for instance, the most important parish, there are (according to a return with which we have been fur-

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nished by Mr. Gardner, the Secretary to the Lieutenant Governor) 340 members of the Parochial Assembly, who vote by virtue of rate, and hold no office; 31 police and ex-police officers, who vote ex-officio, but would not vote by virtue of rate; and 11 police officers, who are entitled to vote both ex-officio and by virtue of rate: so that about a ninth of the Assembly consists of police officers, and this without reckoning the ex-police officers who are entitled to vote by virtue of rate. In country parishes the case is much stronger. In St. Ouen's the whole number of members is only 48, and 26 of these consist of police officers. In every parish but one there is a strong police and anti-police party. The elections of the officers of Police are the occasions of eager party conflicts. The rating itself furnishes matter for party dispute, it being alleged that the predominant party in the Assembly assesses the rate so as to include as many friends as possible within the amount which makes Principaux of rate-payers, and either to exclude adversaries from the rate altogether, or assess them at the highest rate which would not make them Principaux, or, if they are Principaux, to assess them in a sum unduly large in comparison with that at which the Principaux of the opposite party are assessed. The appeal to the Royal Court is unsatisfactory. That Court, from its constitution, does not escape the imputation of party motives; and a person excluded from the rate can obtain redress only by being assessed at half his actual property, while it is notorious that the assessment throughout the Island is universally much lower. The elections of constables and centeniers may likewise be disputed before the Royal Court: but this again is too apt to assume the character of a party contest. In St. Hélier's, Mr. Le Sueur, the constable of the parish, as might be expected from his activity and acknowledged ability, has earned the confidence of his own party. But we cannot look upon a circumstance of this sort as other than unfortunate so far as regards the working of the police system. In most of the parishes, in St. Hélier's, perhaps, most conspicuously, the performance of the functions of the Police is continually subject to the imputation of political partialities or antipathies. Much evidence on this point was produced: and we were compelled to adopt the conclusion that these feelings often do, with some of the offiers, vitiate the performance of the duty, and often, which is an evil only one degree less, are unjustly suspected to do so. Mr. Le Sueur urged strongly upon us that the efficiency of the Police was more moral than physical, and that the moral efficiency was seriously diminished by the results of party animosity The soundness of this opinion was put beyond all question by the evidence produced before us.

One consequence of the party spirit which has entered into all discussions connected with the Police is, that the magnitude of the evil is itself a matter of dispute. But the dispute is only as to the degree; for that there are evils in the present system appears not to be questioned at all. There is, necessarily, much difference of opinion as to the extent and nature of the remedy to be applied: but no one seems to suggest that things should remain as at present.

Mr. Le Sueur, whom we may consider as the ablest representative of the party most adverse to extensive changes, suggests three remedies: these are, an improvement in the law of rating, the appointment of a magistrate for the immediate adjudication upon minor offences, and the institution of a paid night-watch. The mode of rating is fixed by a law of 1833, at which time the majority in the States was in the hands of the party opposed to that which has now the majority, and which latter is the same as the present police party in St. Héliers. In the recital of that Act it is stated, "que souvent ceux qui formaient la majorité dans les Assemblées de Paroisse, abusant du pouvoir que la loi leur a confié, ont, à la veille d'une élection, dans la vue de favoriser leur candidat, obtenu une rectification du Rât Paroissial, et y ont fait inscrire des personnes qui ne possédaient aucune propriété, et en ont fait retrancher qui avaient les moyens de contribuer aux taxes publiques, et que ces abus de pouvoir ont donné naissance à une foule de procès, et servent d'autant plus à alimenter l'esprit de parti et à soulever des passions haineuses, qu'ils restent le plus souvent impunis par le défaut de la legislation actuelle; que la plupart des Assemblées de Paroisse ne répartissent point les taxes publiques en proportion de la fortune des contribuables, et ne suivent, pour ainsi dire, d'autre règle que leurs caprices." The law, however, which was then introduced, has not

removed these abuses. But, even if a perfect system of rating could be devised, the only result would be that the prevalent party in the Parochial Assembly would have less power to oppress or exclude their adversaries: the spirit of party would not the less attach to the police system: nor do we think it possible that this can be prevented so long as the choice of the officers is a subject of party contest. We therefore do not suggest any alteration in the constitution of the Parochial Assembly, nor in the mode of rating. Such alterations may or may not be desirable in themselves: but, as we think it necessary to do away altogether with the connection between the Police and the Parochial Assembly, we consider that the question as to the mode of rating and the constitution of the Assembly ceases to be a subject within the compass of our inquiry.

It appears to us that there can be no doubt as to the propriety of the second measure proposed by Mr. Le Sueur, the appointment of a magistrate before whom persons may be brought without delay. At present, prisoners are sometimes kept in custody for four or five days before they see a magistrate: and, when they do, it may happen that the offence charged has either not been committed, or has been one which would have been adequately punished by a shorter confinement. It sometimes happens that the officers, to avoid the risk of this injustice, allow offences to pass with impunity altogether. The appointment of such a magistrate would also be important in another point of view, to which we shall advert when we speak of the constitution of the Court.

We also agree altogether in the propriety of adopting the other measure proposed by Mr. Le Sueur, the institution of a paid nightly watch.

It has been suggested, in many quarters, that this ought to be carried further, and that there should be, not only a paid nightly watch, but a paid Police, acting throughout the island. This is a point upon which the most vehement conflict of opinion exists. We believe, but with some doubt, that a numerical majority of the inhabitants is opposed to such a plan. The minority, if it be one, which supports it, is at least equally vehement in the expression of its feelings. Mr. Le Sueur himself is decidedly opposed to this enlargement of his plan; and, as he may be considered the head of the present police party in St. Héliers, we proceed to discuss his objections, which were urged with much force and distinctness.

He thought it, in the first place, important that the unpaid functionaries of the Police should still, ex officio, form a part of the Parochial Assembly, in order to countervail the influence possessed by the paid functionaries, such as the Procureur Général, who also take their places there ex officio. If it became necessary to enter into this question, we should have to compare the numbers of the different kinds of ex officio members, and to estimate how many, in the two cases, would have been in the Parochial Assembly independently of their office. But this we need not do, because the proposed change would not vary the constitution of the Assembly in this respect. If there is to be a paid Police, we should propose that the constable, centeniers, vingteniers and officiers du connétable should be elected as at present, and in the same numbers, retaining even the same names. The duties connected with the Criminal Law would be entirely taken away from them; their other duties would remain. The constable would still be the representative of the parish in the States, and the centeniers his deputies in case of absence. There are also some trifling duties which are exercised by the vingteniers; they consist in the collection of certain fines, which produces a small remuneration, and that of the parochial rates, which is gratuitously performed. The officiers du connétable might still be elected, and take their place in the Parochial Assembly, as assisting, if that be necessary, in counteracting the influence of the paid ex officio members. Nothing of this would be lost by taking away from all the present police officers the whole of the duties connected with the preservation of the peace and the enforcing the Criminal Law. They would be relieved from duties which are extremely onerous, and for which they are not paid; and the distinction which their election confers upon them would be, to say the least, not impaired. This would not even, according to Mr. Le Sueur's view, diminish their political power; for that gentleman is of opinion that those duties are never executed with the intention or the effect of promoting any party object. The reverse is, indeed, asserted by the advocates for the change; but, as these would object to party power so supported, the practical result is the same. The state of parties, for all purposes, at least for all avowed legitimate purposes, would be unaltered.

Mr. Le Sueur's other objection does not admit of so easy an answer. It

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arises from the probable expense. At present, the whole of the duties of the Police are performed gratuitously: the remuneration looked to is the power and distinction which, under the existing system, is conferred by the election to the offices. This motive will cease to act, when the appointment no longer is connected with political power. We were, indeed, assured by one of the most active of the centeniers that he served from the love of his country: but it will not be reasonable to calculate upon the prevalence of such a motive in general, as an inducement to undertake the duties of a police officer. It cannot be doubted that a large expense must be incurred if the change is to be made.

We have had the advantage of communicating with Captain Hay, who, under the direction of Your Majesty's Government, visited Jersey for the purpose of making inquiries on this subject. He estimates the expense of a change as to which there seems to be little or no difference of opinion, the introduction of a sitting magistrate and a night police, to act in the town of St. Hélier's, at 1560*l.* 4*s.* By making this a day police as well as a night police, the expense, he calculates, would be increased to 1972*l.* 4*s.*; and to 2746*l.* by extending it over the whole Island. The difference of expense between the least and most extensive of the schemes is therefore that between 1560*l.* 4*s.* and 2746*l.*, or 1185*l.* 16*s.*, upon which sum the practical question turns. Mr. Le Sueur suggested that the more contracted scheme might be paid for partly from the States and partly from a tax upon houses. Mr. Gardner (whose estimate of the probable expense was rather higher than that of Captain Hay, namely, 3097*l.* 18*s.* 4*d.*) recommended a tax upon tobacco, at 4*d.* per lb. This, he calculated, would produce 3942*l.* 2*s.* 4*d.*: but his calculation makes no allowance for any diminution in the consumption consequent upon the imposition of this tax. The tax could, however, hardly raise so little as the 2746*l.*, at which Captain Hay estimates the whole expense. A large revenue would fall in if, instead of the real functions of the Governor being executed, as now, by a Lieutenant Governor, the Governor were to act in person, and receive only the remuneration which the Lieutenant Governor receives at present. But, upon any view, the proposed change will involve some increase of expense: the inhabitants of the Island of course are not willing to incur additional taxation; and, if the money were supplied from Great Britain, we believe the arrangement would please neither country.

Mr. Le Sueur pointed out to us that the prosperity of the Island is, in a great degree, attributable to the absence of local taxation. This is clearly the case. The question, however, still remains, whether the evil state of the law, which manifestly derogates from the prosperity of the Island in the most extensive sense of the word, does not do so even as far as concerns its mere wealth. At any rate, the choice is to be made between an additional expense and the continuance of a system like the present. We have only to say that to us the latter appears much the greater evil. Upon the best judgment, therefore, which we have been able to form, we recommend that the police functions of the present officers should entirely cease, and that a paid police force be organized, independent of the Parochial Assembly, having power to act indiscriminately throughout the Island. That this would, at first, be disliked by a large part of the population we think highly probable; but we believe that the dislike would be temporary, and that the inhabitants would very speedily feel the advantage of seeing, in the place of officers created by, and forming a section of, a party, mere public servants devoted to the particular duty.

We proceed to offer the opinion which we have formed as to the present constitution of the Royal Court. It has been seen that the twelve Jurats are elected for life, and form a third part of the legislative body. One of these gentlemen had been at the bar; another had been an écrivain in very extensive practice; most of them had served in the offices of constable and centenier; very few had received anything like a legal preparation for the office. We think it scarcely necessary to state our opinion that a Court so constituted is unfit, from want of legal knowledge, to administer the law. The Bailiff is, and of late years has generally been, a regularly educated lawyer; but his legal knowledge is never available unless there be a difference of opinion among the Jurats, and an equality of votes for each opinion. Even then, he can vote only for one of the opinions which the Jurats support: and it has happened that he has been compelled to support an opinion at variance with his own, because, of the two opinions held by the Jurats, neither accorded with his view of the law.

The incapacity of this tribunal does not constitute the only, perhaps not the greatest, objection to it. By the nature of the election of the Jurats, they are constantly put into office from party views. A very common introduction to the office of Jurat is the having served in the offices of centenier and constable, a circumstance which tends strongly to generate party feelings before the election to the Juratship. After such election, the functions which the Jurats are called upon to discharge in the States necessarily operate in keeping party feelings alive. The result is, that this tribunal does not possess the confidence of the inhatants, and, we think, does not deserve it. One only argument was suggested to us in support of this part of the system. It was said that an inhabitant would possibly attach more weight to the opinion of the Bailiff, if that were confirmed by the voice of Jurats whom the inhabitants had concurred in electing. But we cannot feel the force of this. First, as Mr. Advocate F. Godfray reminded us, there is a minority in every contest as well as a majority; and an inhabitant who had voted against a Jurat might think so much the worse of an opinion for its having the sanction of a Jurat whom he deemed not fit for the place. But, next, the Jurat's vote must either agree with that of the Bailiff or differ from it. If it differed, the probability would be that the Bailiff, a lawyer, was right, and the confidence in the Jurat would be misplaced. If it agreed, any additional confidence occasioned by that circumstance would be erroneous, as being grounded on the circumstance of a competent opinion being supported by an incompetent one. We consider that the judgment of the Jurats, except in the few accidental cases where a lawyer has been elected, must be superfluous where it agrees with that of the Bailiff and mischievous where it differs. There is little chance of this being remedied by a general determination, on the part of the rate-payers, to elect only competent lawyers to the office; and such a determination would not be desirable, as it would continually exclude valuable members from the legislature, and would create a criterion very ill applicable to legislative functions. We think it unnecessary to add to these considerations the arguments ordinarily urged against a multiplicity of judges, and will merely state that, as this tribunal is constituted, the evils which are usually attributed to a numerous bench seem to us to be aggravated, and the benefits to be excluded.

We therefore, without any hesitation whatever, recommend that no member of this branch of the legislative body shall form part of the judicial body. We will hereafter suggest what appears to us a better mode of constituting the tribunal.

The present mode of preparing a case for the judgment of the grande enquête appears to us altogether faulty. Mr. Le Sueur urged upon us the impropriety of leaving it exclusively to the discretion of the law officer of the Crown, whether a case should be brought forward or not. It is not indeed quite clear that the Court cannot compel a prosecution where the Procureur Général refuses to prosecute; but this, in practice, is not done. We concur with Mr. Le Sueur in this view: and we believe that the exercise of the discretion by the Procureur Général has occasionally been made the subject of attack by political antagonists of the particular functionary, and exposed to the imputation of party motive. The constitution of the enditement is, we believe, objected to by every individual who has expressed an opinion on the subject.

We propose that there should be appointed from time to time, by the Crown, three paid Judges; a Judge for cases of summary jurisdiction, a Judge for preliminary proceeding, and a Judge for trials by the enquête. That none of these should vacate office during life, except by resignation, or by order of Privy Council after a hearing and enquiry. That these three should at fixed periods sit together, and form a Criminal Court of Three. That the individuals filling these places should be selected from the present Bailiff and Jurats, but not from Jurats to be hereafter elected, and from the present and future Bar; but this rule of selection should not be, we suggest, a matter of positive law, but simply, as in England, a matter of understood ordinary practice. That the three individuals so appointed should discharge indiscriminately the different offices; provided that the Judge who tries by the enquête should never be the Judge who has presided over the preliminary proceeding in the particular case. That, if a Member of the States or Advocate accept the office of Judge, his office of Member or Advocate

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should be thereby *ipso facto* vacant, and that he should be incapable of reelection or reappointment so long as he holds the office of Judge.

That the ordinary course of instituting criminal proceedings which are to terminate in an enquête shall be, for the Police to bring before the Judge for preliminary proceedings a party charged, and proper evidence. That such Judge shall sit every day, and that a police officer shall detain the party charged in custody in a station house only till he can be brought before such Judge. That such Judge shall then hear evidence upon oath, and discharge the prisoner, or commit him for trial, or to prison for reexamination, or bail him. That copies of the depositions so taken, when complete, shall be sent to the officer of the Criminal Court of Three, the law officer of the Crown, and the prisoner or his legal adviser. That all the three Judges shall have the power to issue warrants for the apprehension of a party. That any neglect or misconduct by a police officer shall be an indictable offence. That, when the party is finally committed or ordered for trial, the Procureur Général shall frame the accusation. That the prisoner, having a certain number of days' notice of the acccusation by receiving a copy, shall be brought before the Judge for the trial by the enquête, who shall sit at fixed intervals; and the prisoner shall there plead, and, if he plead Guilty, shall be sentenced by such Judge, or, if he plead Not guilty, be tried, and, if found Guilty by the grande enquête, be sentenced. That such Judge shall have the power, at his discretion, to postpone the trial, or to adjourn it after it has commenced. The absence of material witnesses, or the apparent fitness of producing fresh testimony, may, among other cases, furnish proper opportunity for the exercise of such discretion; though we think that, in the latter case, it should be very rarely and cautiously exercised. That it shall be competent to the prisoner or the Procureur Général afterwards to apply to the Criminal Court of Three, either to have the judgment stayed or reversed for illegality, or to have a new trial ordered in case the Court be satisfied, by affidavit or the report of the Judge who has presided at the trial, that there has been a failure of justice at the trial. That, in any case where a party has been ordered for trial by the Judge for preliminary proceedings, the law officer of the Crown shall be entitled to quash the proceedings at any stage. That he shall likewise have the power, ex officio, to demand a warrant for the arrest of any party, and bring him to trial, and frame an accusation on his own responsibility; it being understood that this is done only in cases where he is of opinion that there would be, or has been, a failure of justice in the Court for preliminary proceedings. That, where he does so, he shall himself examine witnesses on oath, and furnish the prisoner or his legal adviser, and the officer of the Criminal Court of Three, with the copies of depositions and of the accusation. That the trial shall then proceed as before. That, where the Judge for preliminary proceedings has refused to send to trial, or where the law officer of the Crown has quashed the proceedings before trial, it shall be competent to any party to bring the case by affidavit before the Criminal Court of Three, who, if they think fit, shall direct a prosecution by the law officers of the Crown, or, if they refuse, shall appoint a commissioner to take the depositions, which shall be transmitted like the depositions in other cases; and the Court shall appoint an advocate to frame the accusation and conduct the prosecution. That, where a private party intends to pursue this course, he shall be entitled to apply to any of the three Judges for a warrant to arrest the accused, which Judge shall issue or refuse the warrant at his discretion.

We think that these three methods of proceeding will suffice to secure the public against negligence or partiality in keeping back prosecutions; and, further, we think that the prisoner will thus come before the enquête, not, as now, with a verdict recorded against him upon the same evidence which is to be before the enquête, but only with the opinion of the magistrate, or law officer, or Court, that, upon ex parte evidence, there is a case for inquiry. We do not agree with Mr. Advocate F. Godfray, who considers that this would prejudice the enquête against a prisoner more than a verdict upon the identical evidence. Nor do we think that the experience which this country has had of the working of the system of Grand Juries is such as to furnish any reason either for retaining in the law of Jersey, or introducing into it, any proceeding analogous to the method of finding indictments in England.

The depositions will not form evidence in the cause. The witnesses at the

trial should be all heard on oath, in the presence of the enquête. The prosecutor and defendant should each have the power to summon witnesses, by a warrant from the office of the Criminal Court of Three, to be served by the prevôt. The present method of taking the testimony of witnesses who are unable to attend, by means of the Viscount, should be continued; but the Court at the trial should, before such testimony is read, require proof of the inability of the witness to appear in person. Either party should be entitled to produce the depositions (which for that purpose should be transmitted to the Judge, by the officer of the Criminal Court of Three), not as evidence of the facts there sworn to, but as merely evidence, if it become material, that the witnesses gave such testimony before, which will become material on the trial only in few instances, as where a witness contradicts or enlarges his former testimony. The witnesses before the enquête need not be confined to those whose depositions have been taken, nor need those who were examined appear before the enquête; but the addition or subtraction of witnesses will, of course, always furnish matter of comment to the jury. The present mode of reading the constable's report to the enquête we hold to be very objectionable, especially as it generally comprehends hearsay, and other matters which are not legal evidence. The law officer of the Crown and the counsel for the prisoner concur in urging the jury not to notice what is not evidence; but it should not be heard at all. We hardly think it necessary to point out the impropriety of the present mode of taking the evidence in writing in the absence of the jury, and reading it to the jury without their seeing the witnesses. But we must advert to an opinion expressed by Mr. Advocate Marett on this subject; and the more so, because this gentleman has devoted much thought and labour to the subjects brought before us, and has addressed himself to the inquiry with perfect freedom from party feeling. Mr. Marett, though alive to the importance of letting the jury hear the evidence given, was of opinion that the enquête would not gain so much by this, as they would lose by not having the evidence taken down in writing and handed to them for consideration and comparison. We do not agree in this opinion; and we think that the Judge's notes of the evidence given, which ought to be read fully to the jury, would supply the want of the written evidence. But, if this be not so, we think that the two methods might be combined, and that the evidence, though given before the enquête, might still be taken down and read over to the witnesses, and the writing handed to the jury. It is possible that our English habits lead us to underrate the advantages insisted upon by Mr. Marett. The objection to combining the two methods would be the increase of time occupied in the trial, an objection which cannot countervail the advantage, if it be one. We recommend, further, that, if the evidence is to be taken down fully by the officer of the Court, the very words of the question and answer should be taken, and the present mode of substituting the third person for the first and second be discontinued.

Another objection was urged to the hearing of vivâ voce evidence by the jury at all. It was suggested that the experience and ability ordinarily possessed by the law officers of the Crown would give them an advantage in cross-examining witnesses, which would prejudice the case for the defence in the eyes of the jury. We think the risk of this much less when the cross examination takes place in the presence of the jury, than under the present method. An apparent contradiction may appear very serious when the evidence is seen only as written, which, if the jury had heard and witnessed the tone and manner of the question and answer, might be fully accounted for.

It will be observed that the plan which we propose gives, in ordinary cases, only one trial by jury, and does not entitle the prisoner to claim a second. The double trial is considered by some persons, though not by the majority of the bar, as a feature of the present system which ought to be preserved. Mr. Advocate F. Godfray, whose great experience, as a defender of prisoners, entitles his opinion to much deference, argued very earnestly against a change in this respect. He considered this part of the present system valuable, not simply as giving the prisoner a better chance of escape, but as increasing the probability of arriving at the truth, whether the prisoner was guilty or not. If this be a correct view, the end would be more properly attained by entitling the prisoner to demand a second trial by the enquête, than by the present method. And it should seem that, according to Mr. Godfray's view, the prosecutor ought to

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have the same power in the event of an acquittal. Nor do we understand where the argument stops, or why, if two trials should be allowed on account of their increasing the probability of arriving at the truth, there should not be three, or more. We are, however, of opinion that the risk of injustice on one trial will be sufficiently guarded against by requiring, in the first instance, the exercise of the judgment of the magistrate who sends to trial, and entrusting the Criminal Court of Three, after one trial, with the power of ordering a second, if necessary to the ends of justice.

The proceeding before the Judge of summary jurisdiction requires little explanation. A summons, and, on disobedience, a warrant to arrest, might be granted by any of the three Judges. The witnesses should be heard vivâ voce, as now; but it need not be required that all should be present at once; and the Judge should have the power of postponing or adjourning the hearing. This Judge should also have the power to order that a case brought before him should be taken before the Judge for preliminary proceedings.

Mr. Advocate F. Godfray informed us that, some years ago, he proposed to do away with the twelve Jurats as Judges, and to substitute two paid Judges elected by the people from practising lawyers, but that the scheme was so unpopular that it was abandoned. We think that the advantages of popular election do not extend to the selection of Judges; and we therefore have proposed that the Judges should, as is the case in countries quite as jealous on behalf of popular rights as Jersey, be named by the Crown. This, however, will not add to the popularity of the change in the first instance. On the other hand, Mr. Godfray is of opinion, that the unpopularity of appointing paid Judges would be at this time, to a certain extent, diminished.

This leads us to recommend another change. Mr. Godfray's proposal, as we understand, was that the selection should be made from the Bar. The Bar consists now of nominally eight persons, including the law officers of the Crown; and two of the eight have discontinued attending the Court. There would thus be only six to select from; for which reason we have also suggested that the present Jurats, who have had some experience, be added to the Bar, as a body from which to select. Further, however, we think that the Bar should be no longer confined to this number. Business has occasionally been suspended from the difficulty of finding advocates to act. And the arbitrary power of appointment, now lodged in the Bailiff, should be done away with. We recommend, therefore, that the number of advocates be unrestricted. And we would suggest that the power of admitting them should be lodged in the Criminal Court of Three, and that this Court should form some rules for ascertaining and securing the qualifications of applicants. We offer no positive advice as to what these rules should be; but one negative recommendation we must make, namely, that to be a member of the English bar, or to have kept a certain number of terms in England, should not, unless the system in this country be greatly altered, be allowed to be, either wholly or partially, a qualification for admission to the bar of Jersey.

We have defined the duties of the three proposed Judges, so far only as regards the administration of criminal justice. The proposed plan would not create a heavy demand upon the time of the persons holding these offices, especially as the state of business might be often such as to allow one of the Judges to dispose of the cases in two Courts, the only restriction being that no Judge should try with an enquête a case which he himself had ordered for trial. But it would be easy to distribute among the three Judges other duties which they might conveniently perform. If, for instance, a plan was carried into effect which, to a certain point, has received the sanction of the States, namely, the establishment of a Court for the recovery of small debts, this Court might be presided over by any of the three Judges. And, should any general change be made hereafter in the method of trying civil causes, the three Judges might be called upon to take part in the new system: for we think it a great advantage that the persons who adjudge upon criminal cases should be familiar with the law upon civil questions.

The proposed plan takes away from the rate-payers the power to elect by their suffrages the criminal Judges. We believe the possession of such a power to be, not essential to the maintenance of popular rights, but inconsistent with it. Still, if so great a change is to be made respecting offices hitherto filled by popular suffrage, it may deserve consideration whether that suffrage is allowed

its due effect in other respects. At present, two thirds of the Members of the States sit for life: the responsibility to the electors extends to one third only. If the constables are no longer to exercise the duties of the Police, they become purely politicial functionaries; and the question suggests itself, whether the proportion which they bear to the members who sit in the States for life be sufficiently large. Another question will be whether, as the President of that Assembly, in the proposed plan, will no longer be a judicial officer, the office ought to be filled by the appointment of the Crown or by the States themselves. We do no more than indicate these questions, as they do not come directly within the scope of the inquiry with which we are charged: and we allude to them now merely for the purpose of suggesting that, if changes are to be made in the constitution of the States, it might be well to make them contemporaneous, or nearly so, with the proposed changes in the criminal tribunals.

We have next to remark upon the constitution of the Grande Enquête. Conformably with the ancient Norman institutions, the members of this body are chosen by a legal functionary, at present the law officer of the Crown, and summoned a few hours before the trial. This is altogether inconsistent with modern principles, and is universally objected to. It is agreed that the duty of selection has been exercised with perfect fairness by the individuals upon whom it has fallen: but the present character of individuals is only a temporary guarantee; and, even assuming that the duty will always be as fairly discharged as at present, it can hardly be doubted that in cases producing much excitement there will be risk of suspicion and imputations being suggested, which may seriously impair the public confidence in the administration of justice.

In January, 1846, a projet de loi for the amendment of criminal procedure was referred to a Committee of the States. No report had been presented at the time of our inquiry. It was drawn up by the very learned and able person who now fills the office of Avocat de la Reine. We find many of our views anticipated in this valuable document: but at present we refer to it only for the plan there laid down for the constitution of the enquête. The plan, in substance, is that a list be annually prepared and revised of persons, with exceptions in certain cases of exemption, rated to a certain amount, and that names from these should be taken by lot for the juries. We concur altogether in this recommendation: and, for the details, we refer to the project itself. There may be some doubt whether the present number of twenty four be not inconveniently large. If the demand made upon the time of the rate-payers be not complained of, there need be no alteration in this respect; if any alteration be made, we recommend that the number should be twelve, and that the prisoner be acquitted unless ten of the twelve pronounce him guilty, thus preserving the present proportion: or the number might be eighteen, the concurrence of fifteen being made necessary for the condemnation. We are not disposed to recommend a change to the English principle of requiring unanimity: the law of Jersey, besides being sanctioned by practice, appears to us by far the more reasonable of the two.

The opinions of those whom we examined appeared to be unanimously in favour of the entire abolition of the causes en ajonction. In this we altogether concur. If the case be one in which the public is interested, no private person ought to have any control over the prosecution: if it be not, it ought to be treated as a cause exclusively civil.

Having stated our views upon the general system, as regards both the classification of crimes and punishments, and the process of enforcing the law, we shall conclude with some suggestions on certain points, connected with the administration of criminal justice, but not finding a convenient place in our preceding remarks.

The extent of the local jurisdiction of the Island seems to be not very clearly defined. If a mortal wound were given at sea, on board a Jersey ship, by one inhabitant of Jersey to another, and the ship put first into Jersey, and the death occurred there, it appears to be agreed that the Criminal Court of the Island could take cognizance of the case. But it is not clear how many of those con-

REPORT,

ditions, without the others, are enough to give the jurisdiction. This ought to be settled; and for this purpose an Act of Parliament will be necessary.

It is not clearly settled at what age responsibility to criminal law commences, nor what is the proper mode of proceeding when the supposed criminal is insane at the time of the trial or was so at the time of the alleged crime: and the law does not provide sufficiently for the proper custody of lunatics charged with criminal offences. There is also no determinate rule as to whether any, and if so what, length of time from the commission of a crime exempts the criminal from punishment. These points ought to be settled by an enacting or declaratory Ordinance.

The present law, which takes away from the Criminal Court all jurisdiction in cases of treason and violence committed upon the servants of the Crown in the execution of their offices, may be reasonable. But the proper mode of proceeding in Jersey, in such cases, is not settled; nor has it been, so far as we know, actually decided that the English statutes as to treasons extend to the Island. Upon general principles, we presume that all such statutes would have force in Jersey: but we consider that an Act of Parliament would be useful for the purpose of putting an end to these doubts.

Should the revision of the laws, which we have recommended, take place, it may deserve consideration whether the law of forfeiture to the Crown ought to remain. All the higher offences now involve this penalty: but the income accruing to the Crown must be utterly insignificant, even if the right of the Crown were uniformly insisted upon: and, in that case, the result would scarcely be consistent with the humane spirit of modern legislation.

The levée de corps, if a proper system of police were introduced, would become entirely useless; at present it is so, except in case of the neglect of the Police; yet, in the great majority of cases, we believe that it is only in consequence of notice from the Police that the proceeding does take place. The finding of the jury does not, as in England, constitute an accusation; the Procureur Général always proceeds on the constable's Report in these as in other cases. The proceedings, therefore, appear to be altogether superfluous, except in the case of suicide, where the finding of the jury would be necessary for securing the forfeiture. But we have already mentioned that the jury always find the fact of insanity, so that this case never arises; and, further, if forfeiture be abolished, it never can arise. In the projet de loi, of which we have spoken, it was proposed that the verdict on the levée de corps should be sufficient of itself to send the accused party to trial. The proceeding would thus be brought into conformity with the English law; but, to the best of our judgment, this is a point in which the English law does not deserve imitation. If the levée de corps is to continue, some regulation ought to be made as to the expenses. On this subject there are disputes pending between the States and Your Majesty's Receiver.

The law of evidence requires revision in many respects.

Certain degrees of relationship have, from early times, been sufficient to exclude witnesses from giving testimony, except in particular cases. A recent Ordinance of the States, which was intended to define the law in this respect, has not placed it on a satisfactory footing. The exempted cases are not intelligible; and the restrictions appear to us very unreasonable.

Some movements have been made towards the establishment of a law for the case of witnesses who object to take an oath. In consequence, however, of the English statute being inapplicable to the mode of proceeding in Jersey, and of the legislative enactment of the States not having been sanctioned by Privy Council, grievances have occurred to individuals, and must continue to occur, from time to time, until the law on this point is satisfactorily laid down.

By the present practice of the Courts, evidence may be given against the character of a witness; and, for this purpose, proof may be made of particular acts done by him, as to which acts negative proof may be given, including fresh evidence against the character of witnesses brought to prove the acts, which last mentioned evidence may itself consist of proof of particular acts,

and so on without limit. Evidence in favour of the character of accused parties may also consist of proof of particular acts; and this may produce the same latitude of proof.

The Courts appear to have retained an ancient principle requiring two witnesses to a fact. This seems latterly to have been so far modified, that there need not be two witnesses to an insulated fact, although still there should be, in strictness, no conviction if only one witness be heard in the case. This difficulty will very rarely occur: but the state of law on the point seems to us unreasonable.

If a required witness be out of the Island, the Court has no means of obtaining his evidence. To remedy this inconvenience, which has been frequently felt, an Act of Parliament seems necessary.

Persons nominated by the Bailiff as écrivains perform certain duties, in some respects analogous to those of English attorneys: among these is included the taking down the evidence: but no regular training or qualification is prescribed. We think it would be expedient that the Criminal Court should determine upon some mode of ensuring the proper education for this profession, and that the admission should be formal and public. Further, we think that such a duty as that of taking down evidence which is to be recorded ought to be performed by a regular officer of the Court.

It has been suggested to us that the proceedings ought to be carried on in English, and not, as now, in French. It is probable that this will be necessary at a time not far distant. Mr. Gardner calculates that the number of persons who, for practical purposes, may be considered English, amounts to half the population. On examining the elements of his calculation, it appears to us that the proportion is not so large: but unquestionably the English part of the population does form a very considerable part of the inhabitants, especially in St. Hélier's, which produces the greater number of criminal cases. This proportion will become continually larger, if we are right in thinking that the influx of persons who are not natives is the principal source of the increase of the population and of crime. Besides this, throughout the Island the English language is rapidly gaining ground. In St. Hélier's it is not common to meet with a person who cannot converse in English; and in the rural parts of the Island the children can do so almost universally. Probably, in another generation the English language will be at least as familiarly known as the French. We are, nevertheless, not prepared to recommend a total change. If the necessity should arise, the change will be universally called for, which is certainly not the case at present. But some modification of the present system is necessary. The offenders, brought before the Court in the ten years which elapsed from the end of 1835 to the end of 1845, were in number,—

| | |
|---|---|
| English, Irish, and Scotch . . . . . | 1264 |
| Inhabitants of the Channel Islands . . . | 670 |
| Foreigners . . . . . | 178 |

So that much the larger part of the persons who have been subjected to the criminal law of Jersey have been ignorant of the language in which the proceedings have taken place. This becomes very important in the case of a trial; for the accused party, unless he understands the language used by his advocate, is unable to offer information or suggestions which may be brought to his mind by the speech of his counsel. We should recommend, therefore, that the Court should have the power, at discretion, upon a request to that effect from the prisoner or his legal adviser, to order that the proceedings should take place in English. This order should be made before the Jury is selected, as ignorance of the language in which the proceedings are to take place should be a good ground of challenge.

The order in which the counsel now address the Court and Jury appears to us not the most convenient or fair. After the evidence is read, the counsel for the defence is heard, and then the Law Officer for the Crown, who is counsel for the prosecution. No other address is made until after the verdict is given. It would, we think, be better that the counsel for the prosecution should always open the nature of the case and the evidence to be produced: it furnishes

REPORT.

a fair matter of comment when the evidence produced shows that the counsel for the prosecution has been misled as to the case. For the same reason, the counsel for the accused ought, at the close of the evidence for the prosecution, and before the evidence for the defence is given, to address the Jury. At the close of the whole evidence (including the evidence, if any, given in reply), both counsel should, we think, be again heard, the counsel for the defence last. This seems to us, on the whole, the fairest arrangement: it will be seen that it differs from the English practice, as well as from that of Jersey. Further, we see no advantage in the present practice of following up the verdict by the conclusions of the counsel for the prosecution.

A custom prevails, which we think very objectionable, of allowing parties charged with trifling larcenies and other offences to quit the Island instead of undergoing prosecution. Their passage is then paid, either to Guernsey or England; in the latter case, ordinarily to Southampton. When a party is so sent out of the Island, a term is generally fixed, within which the party is not to return, under "telle péine qu'il appartiendra." This is seldom done in the case of natives.

We were told that, when paupers in Jersey, who are not natives, apply for relief, they are generally sent back to their settlement; but, upon further inquiry, it appeared that settlement meant the place of birth only, and that the sending back consisted in dispatching the pauper to the port in England to which he could most readily be sent, the passage being so far paid. Complaints are made in Jersey of the carelessness with which paupers are sent from England to the Island, on the supposition of their being natives.

The whole of this subject seems to be one requiring the attention of Parliament.

The last point to which we have to advert is the power exercised by the Governor of sending persons, who are not natives, out of the Island. The Island is nearly in the condition of a garrison town; and unquestionably the Governor, who is responsible for the military defence, ought to have a power of this kind. It is, however, liable to abuse; and, in one case which was brought before us, the order of the Lieutenant Governor had manifestly been obtained for the purpose of correcting or regulating the domestic relations of a family. The proper remedy seems to be that, wherever the power is exerted, the Governor should be required to report the case, with the special circumstances, to Your Majesty's Secretary of State.

In closing our Report on the Criminal Laws and Tribunals of Jersey, we are bound to state to Your Majesty our conviction that some of the changes which we propose will be displeasing to a numerous part of the inhabitants, and that to another part it will appear that we have not gone far enough. So strong are the feelings of the extreme reforming party, that it was urged upon us to recommend measures which would stop little short of an absolute adoption of the English law, and an annexation of the Island to an English circuit. We cannot believe that this is necessary, and are persuaded that, until after the failure of every attempt to secure to the inhabitants the preservation of peace and the due administration of justice by a modification of their own institutions, so violent a change ought not to be attempted. Its unpopularity, though not a slight objection, is yet one less strong than the danger that generations may pass away before a system entirely new can be brought into working order and become adapted to the feelings and habits of the population. On the other hand, there is a very numerous party, to whom the mere fact of a change conveys a suspicion of an intention to subvert the constitution of the Island, or, at the least, to favour one party at the expense of another. Between these there are two parties: the one anxious for a reform of existing evils, but unwilling to see them too astutely, and keenly alive to the risk of violent changes; the other anxious to preserve what is free from evil, but unwilling to make allowances for a presumption in favour of what exists, and keenly alive to the mischief of actual abuses. From these two parties last described has proceeded the greater part of the evidence given to the Commissioners. We have endeavoured, to the best of our power, to avail ourselves of the caution of one and the zeal of the other. The general feeling which we entertain, both as to the principles upon which a reform ought to be based and as to the difficulty

of forming our own judgment, we cannot describe better than in the words of a gentleman, in whose opinions we have not uniformly concurred, but to whose intelligence, learning and industry we have been much indebted throughout the inquiry. M. Marett, in his notice of the life and writings of M. Le Geyt, thus speaks of the failure of a former attempt at reform. "L'art de faire des lois, toujours difficile dans les circonstances même les plus favorables, devient bien autrement embarrassant lorsque celui qui l'exerce se trouve placé en dehors de la sphère qu'elles doivent régir. Car, pour qu'une loi soit sage, une réforme salutaire, il ne suffit pas que le principe en soit juste, la théorie parfaite, il faut aussi qu'elle s'accommode au génie du people pour lequel elle est faite, qu'elle convienne à leurs besoins et ne choque point leurs préjugés. Elle ne doit pas non plus se trouver trop en contradiction avec le système des lois déjà établi, mais être de nature à s'y incorporer facilement,—à s'y unir comme une greffe à sa souche; autrement, languissante et sans vigueur, elle ne porterait jamais de fruits. Pour bien remplir ces conditions, il faut que le législateur considère avec attention les mœurs de ceux auxquels il veut imposer des règles de conduite, et qu'il connaisse leur état social. Leur histoire lui doit être familière. Il doit avoir approfondi leurs institutions. Mais comment fera-t-il tout cela s'il ne vit au milieu d'eux ?"

Our attempt has been to overcome these difficulties by an anxious and not hurried consideration of the materials placed in our hands. The inhabitants of the Island are not only quick and ardent in their feelings, but prompt to learn and comprehend; and they are devotedly attached to the British Crown. We trust that the prejudices against change, so far as they are extravagant, may be temporary, and may even be conciliated in the first instance, if those upon whom the innovations are to operate shall be convinced of that which we will take upon ourselves to assert, that no alteration has been suggested, except with the single purpose of rendering the Criminal Law of Jersey, and the Tribunals by which it its administered, better calculated than they now are to suit the condition and promote the well-being of the inhabitants.

THOMAS FLOWER ELLIS. (L. S.)
THOMAS BROS. (L. S.)

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[Copies of the following Letter were sent to the Bailiffs, Jurats, Advocates, and other Legal Functionaries of the Channel Islands.]

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*Office of the Channel Islands Criminal Law Commission,*
10, *King's Bench Walk, Temple.*
*July, 4th,* 1846.

SIR,

I AM directed by the Commissioners for inquiring into the Criminal Laws of the Channel Islands to send you a Copy of their Commission, from which you will learn, generally, the objects of the Commission and the proposed subjects of inquiry.

I am further directed to inform you, that it is the intention of the Commissioners to visit the Channel Islands at a future stage of the inquiry, Before doing so they wish to be put in possession of information as full and accurate as can be obtained by written communications. They propose, therefore, to forward to those most likely to be conversant with the Criminal Law of the Channel Islands a series of questions. The first set of the series accompanies this communication; and the remainder will be sent with as little delay as possible.

I have to request your earliest attention to the questions now sent, especially as the Commissioners hope that the information furnished to them in answer to each set of questions will materially assist them in framing those which are to follow. You will perceive, therefore, that the value of any assistance you may afford to the Commissioners will be much increased by their receiving it early.

I have to request, that you will be so good as to send your answers to me to the above address.

I am, Sir,

Your obedient humble Servant,

CHARLES CLARK,

*Secretary to the Commission.*

# COMMISSION APPOINTED TO INQUIRE INTO THE STATE OF THE CRIMINAL LAW IN THE CHANNEL ISLANDS.

*Office of the Commission,*
10, *King's Bench Walk, Temple.*

## QUESTIONS PROPOSED BY THE COMMISSIONERS.

### Series No. 1.

Questions.

1. Will you state what opportunities you have had of becoming acquainted with the criminal law of ?

2. What tribunals exercise criminal jurisdiction in that island? How has their jurisdiction originated, and over what offences does it extend?

3. What are the authorities principally relied upon in the discussion of questions arising upon the criminal law?

4. When it is suspected that a party has committed an offence, what is the step first taken for the purpose of bringing him to justice?

5. Does the Court or officer before whom the accused is brought, in any, and, if so, in what cases, exercise a summary jurisdiction?

6. Where there is no exercise of summary jurisdiction, what preliminary proceedings take place before the accused party is put upon his trial? What steps are taken for securing his appearance before the Court which ultimately takes cognizance of the offence?

7. Where the jurisdiction is not of a summary kind, before what Court is he tried? How is the Court constituted? Are the functionaries who have sent the party to trial capable of acting as members of such Court?

8. By whom are the proceedings against the accused party instituted? What power has any functionary, at any and what stages, of causing the proceedings to be abandoned? What effect has such an abandonment upon future accusations?

9. At what stage, if any, is the charge against the party accused put into a definite form, written or otherwise? How far is it competent to the accuser to vary the form or substance of the charge? And, if at all, at what stage or stages may this be done? And, when this is done, what power has the party accused of remodelling or otherwise improving his defence?

10. What is the form of proceeding, if the party charged admits the facts alleged against him, but denies their relevancy to support the charge?

11. What is the form of proceeding, if the party charged simply denies the facts alleged against him?

12. If the party charged confines himself to a denial of the relevancy of the charges, is he thereby concluded as to the facts?

13. If the party charged confines himself to a denial of the facts, is he thereby concluded as to their relevancy?

14. Is the party charged entitled to the assistance of counsel and other legal advisers? If so, of how many? By whom are the advisers selected? Where the party accused is unable to defray the expenses of legal assistance, has he any and what means of obtaining it?

15. What means has either the accusing or accused party of compelling the production of evidence, oral or documentary, at any and what stages of the proceedings?

16. At what stage in the above series of proceedings is evidence first received? And in what mode and in whose presence is it taken?

17. When is the party accused allowed to hear the evidence produced against him?

18. When is the party accused allowed to produce evidence to meet the evidence produced against him?

19. When, and to what extent, respectively, is the party accused allowed to question the witnesses produced against him?

20. Is there any and what stage, earlier than the actual judgment, after which fresh evidence may not be produced either for or against the party accused?

21. How much of the evidence received at the respective stages of the proceeding is taken down in writing?

22. How is the evidence which is taken down in writing afterwards used? Is it allowable, either against or on behalf of the accused party, to give proof that the written evidence does not correctly represent the whole of what was deposed to? If there are any distinctions in this

Questions.

respect between evidence taken at one stage of the proceedings and evidence taken at another, be pleased to point them out.

23. What are the privileges of the counsel of the party charged, as to being heard on questions of fact or law, and examining witnesses?

24. Has the party accusing or the party accused the privilege of being heard last?

25. What are the functionaries deciding the law, and what the functionaries deciding the fact?

26. By whom is judgment awarded?

27. Has the Court the power to adjourn or suspend its proceedings at any and what stages, and for what cause or causes?

28. Be pleased to detail, as circumstantially as possible, the incidents to accusation and trial, so far as they may not have been brought forward by the answers to the preceding questions.

29. What power of appeal has either the accusing or accused party in any and what forms of criminal proceeding? If any, be pleased to detail the incidents to bringing and deciding upon the appeal, following, as nearly as possible, the course indicated by the preceding questions.

30. If judgment be finally against the accused party, what are the steps taken to carry it into effect?

31. Be pleased, as far as it is in your power, to furnish the Commissioners with the forms used at the various steps of the proceedings which are the subject of the preceding questions: and state the oaths, if any, taken by the witnesses and the members of the Court respectively.

32. What are the modes of appointing the several functionaries mentioned in the answers to the above questions? For what length of time do they officiate? How, if at all, are they removable?

33. You are requested to give any information, not already disclosed by the answers to the preceding questions, respecting the criminal law of , which may appear to you important for the purposes of the commission.

34. You are requested to point out any defects which appear to you to exist in the present system, and to suggest such improvements as may occur to you.

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## Series No. 2.

1. Is there any and what age before which a person is not considered responsible to the criminal law? Is there any distinction in this respect between different offences?

2. What course is pursued if, at any stage of a criminal proceeding, it appears that the party charged was of unsound mind at the time of the offence? What is considered to be the test of such unsoundness of mind as to prevent a party from being responsible to the criminal law?

3. Are there any and what cases in which a married woman is considered not to be responsible to the criminal law?

4. Is there any case in which a party, otherwise responsible to the criminal law, is relieved from such responsibility by having acted under the control of another party?

5. When a party is charged with an offence, what is the result if it appear that he was

(1) Not the actual perpetrator, but present at the time of the offence, and assisting the actual perpetrator by counsel, watching, or otherwise?

(2) Not present, but that he instigated or assisted, by counsel or otherwise, the actual perpetrator before the time of the perpetration?

(3) Not present, but that he, after the perpetration, assisted, by counsel or otherwise, the actual perpetrator

(firstly) in attaining the end aimed at (as, for instance, by disposing of property stolen) by the actual perpetrator?

(secondly) in escaping from justice?

6. In the several cases supposed in the last question, can the party so instigating or assisting be charged with the principal offence? Is he in any, and what, cases chargeable with a specific crime as a participator in the perpetration of the principal offence?

7. In the several cases above suggested, can the party participating be charged alone, or must he be charged together with the actual perpetrator? If he can be charged alone, is it necessary that the actual perpetrator should have been convicted previously?

8. Is there any and what distinction, in this respect, as to different offences?

9. In the cases severally contemplated in the fourth and following questions, what is considered to be legally the limit of actual or constructive presence?

10. Can more than one person be charged in a single prosecution? If so, what takes place if that which is charged as a joint offence is proved to have been an offence in which one of the accused parties did not participate?

11. May different offences be charged in a single prosecution against the same party? If so, may an offence committed by the party alone be charged in the same prosecution with one committed by him jointly with another person?

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12. Is there any, and what, limitation as to the time, reckoned from the commission of an offence, within which a prosecution must be instituted? Is there any, and what, distinction, in this respect, between different offences?

13. In what place or places must an offence have been committed, in order to subject the offender to a prosecution by the criminal law of ?

14. Is there any, and what, distinction, with respect to apprehension, trial or punishment, or any of the incidents thereto respectively, between offences committed in different places within the territory subject to the criminal law of ?

15. Does the law of recognise any classification of offences with respect either to the punishment to which they subject offenders, or the incidents of procedure and trial? If so, what is the technical nomenclature by which the different classes are respectively designated.

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SERIES No. 3.

1. When a witness is produced against or for a party charged with an offence, must the evidence be given by the witness in the presence and hearing of the prosecutor and accused party, and of the tribunal which has to decide on the charge? Is there any and what difference made, in this respect, at different stages of the proceedings?

2. Is the evidence of such a witness given in writing, either by way of statement or in answer to written interrogatories, or orally, on questions put to him at the time on the part of the prosecution and of the party charged? Is there any and what difference made in this respect at different stages of the proceedings?

3. Is it required by the law of that all evidence relating to a criminal charge shall be given under sanction of the oath of the witness? Is there any and what difference made in this respect at different stages of the proceedings?

4. Is there any, and if so what, age before which a person cannot give evidence?

5. Can a person be excluded from giving evidence, for or against a party charged with an offence, on the ground of want of religious belief?

6. Does conviction of any, and if so of what, crimes render a person incompetent as a witness for or against a party charged with an offence?

7. If so, can the competency of such person as a witness be in any, and if so in what, manner restored?

8. Is a party charged with an offence capable of being a witness either for or against another party charged with the same offence?

9. If so, is it in the discretion of the Court to direct whether a party so charged should or should not be permitted to give evidence for or against another party charged with the same offence?

10. If such evidence is admitted, is it necessary that the testimony of such a witness should be confirmed by extrinsic evidence, and, if so, to what extent?

11. What effect has marriage upon the admissibility of the husband or wife as a witness, where either of them is charged with an offence? Can the husband, under any, and if so what, circumstances, be a witness for or against the wife, or the wife for or against the husband?

12. Does any incompetency arise from the affinity or consanguinity of the witness with the accuser or the party charged? If so, to what degrees of affinity or consanguinity does it extend?

13. Is it competent to the prosecutor or to the Court at any, and if so at what, stage of the proceedings to question the party charged touching the offence with which he is charged, or in explanation of the evidence given by any of the witnesses produced in support of the charge or for the defence?

14. Are the statements of the party charged, or his conversations with third persons before or after he has been charged with the offence, admissible in evidence either for or against him?

15. If such statements have been made by the party charged under the influence of a promise or threat, does this render them inadmissible in evidence?

16. Is the confession of a party charged with an offence conclusive evidence of his guilt? Or is he, notwithstanding such confession, permitted on his trial to adduce evidence in proof of his innocence?

17. Is the examination of a witness, whether against or in favour of the party accused, confined to those facts which the witness knows of his own knowledge? Or may he be examined as to what he has learned touching the matter in dispute from declarations, written or oral, of third parties? Is there any, and if so what, rule, in this respect, peculiar to the case of a person who, at the time of his making a declaration, believes himself to be dying?

18. Will a witness be permitted to state in evidence the contents of a written document without producing it, or showing to the satisfaction of the Court that it has been lost or destroyed, or otherwise accounting for its non-production?

19. If either the accuser or the accused seeks to give evidence of the contents of a written document which is in the hands of the opposite party, can the party in whose possession it is be compelled to produce it? If so, by what means? If not, does his refusal to produce it

Questions.

authorize the introduction of other evidence of the contents? If so, what are the rules of practice by which the fact of refusal is established?

20. What proof is required of the execution of any written instrument? When there are attesting witnesses to the execution of the instrument, must all or any of them be produced? In case of the death of all or any of the attesting witnesses, is proof of their hand-writing required? Does the age of the instrument make any, and if so what, difference in the mode of proof? Is there any, and if so what, period after which execution of the instrument is presumed without proof?

21. Are there any, and if so what, rules peculiar to the proof of acts of Courts of Justice, or of other bodies or persons acting in the execution of any specific authority?

22. Can evidence of the character of the party accused be given for or against him? If so, at what stage of the proceedings? May such evidence be contradicted? Can evidence of particular acts of good or bad conduct be given in proof of character?

23. Can a witness refuse to answer a question put to him on the ground that the answer may subject him to criminal liability? Or that it may subject him to civil liability? Or that it may discredit him?

24. Can evidence be given of the bad or good character of a witness? If so, is such evidence confined to general reputation, or may it introduce particular facts? To what extent is such evidence, if given, allowed to be met by opposite evidence?

25. Can a witness be asked, with a view of impeaching his present evidence, what he has formerly said? If so, can evidence be given to contradict his answer?

26. Are there any general rules as to the number of witnesses necessary for the establishment of a particular fact?

27. Are witnesses paid for the expense to which the inquiry has put them? Or for their time? If so, from what fund?

# JERSEY.

## ANSWERS TO THE FIRST SERIES OF QUESTIONS.

JERSEY

*Answers to Questions.*

SERIES I.

Sir J. de Veulle, Kt. 25 July, 1846.

*The Answers of Sir John de Veulle, Knight, Bailiff or Chief Magistrate of the Island of Jersey, to the first Series of Questions.*

1. In reply to the first question proposed by the Commissioners, it may be sufficient to state that I am bailiff or chief magistrate of the Island of Jersey, having had the honour to be nominated to that office by letters patent from His late Majesty, dated in February, 1831. I had previously been an advocate of the Royal Court of Jersey, and afterwards one of the Jurats of the said Court; to which charge I was elected, without opposition, in the month of September, 1827.

2. The only tribunal exercising jurisdiction in criminal cases is the Royal Court. It is composed of the bailiff or judge, who receives his appointment by patent from the Crown, and twelve jurats, "*jurés justiciers*," or sworn justices, who are elected by the general body of rate-payers throughout the island, and hold office during their lives. The Royal Court, as at present constituted, derives its jurisdiction from a charter granted by King John, which has been confirmed by successive sovereigns; amongst others, by Henry III., Henry VII., Elizabeth and Charles II. By the fifth article of that charter, its jurisdiction extends over all crimes and offences whatsoever, except high treason and laying violent hands on the Queen's Ministers whilst in the exercise of their office, which are reserved to Her Majesty in Council.

3. Although the authorities principally relied upon in the discussion of questions arising upon the criminal law are generally English authorities, the criminal law of the island is derived from, and based upon, the ancient laws of Normandy, as cited in Rouillé, Terrien, &c.; to which may be added Orders in Council, Acts of the States, and Precedents of the Royal Court.

4. When it is ascertained or suspected that a party has committed an offence, the constable or other police officer collects all the information he can obtain, and arrests the party accused or suspected. It is his duty immediately thereupon to apprise the chief magistrate, or some other magistrate authorised by him to grant committals, of the arrest having been made, and all the circumstances of the case, together with the nature of the evidence to support the charge; and, if the magistrate see sufficient reason, he makes out a warrant or order of committal, which is taken by the police officer to the gaoler, into whose custody the accused is received. He is then said to be "*mis à la garde du géolier de la prison.*" If the chief or other magistrate should not deem the offence of a nature to warrant the detention of the accused, he orders him to be liberated. He may also order him to be admitted to bail, to appear before the Court when called upon. In some cases the Court, on the information of the Attorney General, orders the seizure of a party accused or suspected.

5. The Court exercises a summary jurisdiction in offences of a trifling nature, such as breaches of the peace, assault and battery, infringement of prohibitory laws, keeping disorderly houses and the like; also where a party accused admits the truth of the charge made against him. In the latter case, if the offence be of minor importance, the inferior number of the Court, after described, passes sentence at once; but, if the accusation be of a grave character, the accused is ordered to be brought up again on a future day before the superior or full Court, also after described in reply to Question 7.

6. There is no preliminary proceeding beyond what has been described in answer to the 4th question. On an early day (usually the first of its sitting), the party arrested is brought before the Court, consisting of the bailiff and two jurats, on a written report of the constable or police officer who made the arrest, detailing all the facts of the case, the grounds of suspicion, &c. This report, having been previously submitted to the Attorney General for his perusal and approbation, and to enable him (if he see occasion) to prepare an act of accusation or indictment, is read by that officer to the Court in the presence of the prisoner and his counsel. If the case is dealt with summarily, or is of trifling importance, the matter is disposed of upon the report, without a formal accusation; but, if the crime be of a more grave nature, the prisoner is called upon to plead to the act of accusation or indictment, framed by the Attorney General, which is now read to the Court, and to which the prisoner puts in such plea as he may be advised by his counsel; or the Court will grant time, and remand him to consider his plea. If the plea be one of "Not Guilty," the Court makes an act permitting the Attorney General "*d'informer*," the effect of which is, to enable him to give evidence in support of the charge, and the prisoner to call witnesses to establish his defence. The prisoner is by the same act remanded to prison or admitted to bail, as the case may be.

7. As already stated, there is but one Court having jurisdiction in criminal cases, namely, the Royal Court. The bailiff or lieutenant bailiff, and two jurats, constitute an inferior number of the Court; and the bailiff and at least seven jurats are generally necessary to form a superior number, or Court of Appeal, from the lesser number. In cases where the Court exercises a summary jurisdiction, the matter is usually disposed of by the inferior number: and in all other prosecutions the testimony of witnesses, &c., is taken and reduced into writing by attorneys of the Court in rotation, before the inferior number. When the whole of the evidence is complete, and the case ready for trial, a jury, called the "*Enditement*," which is composed of the con-

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*Answers to Questions.*

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Sir J. de Veulle, Kt. 25 July, 1846.

stable and twelve police officers, who have not been heard as witnesses against the accused, is convened: and in this stage of proceedings a superior Court, consisting of the bailiff and seven jurats, must be assembled to constitute a Court. The chief or other magistrate who may have ordered the accused, on the report of the police, to be placed in the custody of the gaoler, as also those jurats who have been present at the hearing of the witnesses, are capable of acting as members of the Court.

8. In all criminal cases, or such as partake of that character, without exception, the Attorney General is, *ex officio*, public and only prosecutor, by whom all proceedings against a party accused are instituted and conducted. The Attorney General alone, also, has the power of abandoning the proceedings; and this may be done at any stage of them, if he should think there is occasion for it; although, when the Attorney General does abandon such proceedings, he usually obtains an act of the Court for that purpose. I know of no instance, where such abandonment has taken place, of a second prosecution for the same offence.

9. When the accused is brought before the Court, upon the report of the constable or other police officer, as stated in reply to the 6th question, the charge, act of accusation or indictment, is then put into writing in a definite form by the Attorney General, who thenceforth has no power to vary the form or substance of the charge.

10. If a party admits the facts alleged against him, but denies their relevancy, the Court, after hearing his counsel and the Attorney General for the Crown, decides upon their relevancy, and gives judgment accordingly.

11. A denial of the facts is a plea of "Not Guilty;" and, in reply to the 6th question, the course of proceeding consequent upon such a plea is described.

12. If a party charged confines himself to a denial of the relevancy of the charges, he is not thereby concluded as to the facts.

13. A party charged by a denial of the facts is not thereby concluded as to their relevancy. In fact, it may be stated, generally, that the utmost latitude is given to the accused in his defence.

14. From time immemorial an accused has been entitled to the assistance of counsel, and such other legal advice as he may need. He may have as many counsel as the limited number of the Bar will permit him; but only one can plead, the same rule applying in civil as well as criminal cases. The accused selects his own counsel; but, where there is any difficulty in his doing so, the chief magistrate selects one for him. The members of the Bar act for an accused party gratuitously; and the inability to defray the expense of counsel never, therefore, prevents his obtaining that assistance.

15. All the witnesses, both for the Crown and the prisoner, are, free of any cost to the latter, summoned by an officer, called the Viscount, at the instance of the Attorney General, to whom the accused or his counsel gives a list of such witnesses as he may wish to call. Should a witness when called not appear, or not produce any document which may be necessary for the prosecution or defence, the Court makes an act for the attachment of such witness, or orders the production of the document, as the case may be, and, in default, may order the party refusing to produce such document to be seized and brought before the Court. This may be done at any stage of the proceedings, previously to the actual trial of the accused.

16. When the written charge has been made against an accused, and he has pleaded to it, as before stated, he is remanded to prison. An early day is afterwards appointed for taking the depositions of witnesses. The evidence is always taken in the presence of the prisoner and his counsel, and reduced into writing, except where the Court acts summarily, or upon the report of the police officer, without a formal act of accusation or indictment, when the evidence is heard *vivâ voce*, and the case disposed of by the Court without the assistance of a jury.

17. The party accused is allowed to hear all the evidence against him. Not a single witness can be heard in his absence, or that of his counsel; and the whole of the proceedings are public.

18. The evidence for the prosecution is usually taken first; but the party accused may produce evidence at any time after the charge has been put in proof.

19. The party accused is allowed to cross-examine the witnesses produced against him, immediately after the Attorney General has examined them, to such extent as may be useful and relevant to his defence. He may also have them recalled.

20. As a rule, fresh evidence cannot be received after the trial or hearing before the *enditement;* though, as matter of favour and indulgence to the accused, where, from some cause, a witness could not sooner be produced, fresh evidence has been received after a verdict of the *Enditement*, and before the case has been submitted to the *Grande Enquête* to be hereinafter explained.

21. Where the proceedings take place on an act of accusation or indictment, the whole of the evidence is reduced into writing at the time the witnesses depose.

22. The evidence so taken down is read to the *Enditement*, or *Grande Enquête*, on the trial of the accused; and is used for the purpose of his conviction or acquittal. The evidence having been taken in the presence of the Court, the Attorney General and the accused and his counsel, its correctness cannot be impugned on the trial, unless the defect should appear on the face of the depositions, as in the date, name of the witness, &c., &c.

23. The counsel of the party accused may be heard on questions of law or fact, or examine witnesses, at any state of the proceedings. In this respect all reasonable latitude is permitted him.

24. The Attorney General is always heard last.

25. The Court decides the law, and the jury the facts; though, as the jury in all cases render a general verdict and never a special one, they may be said to decide both law and fact.

26. The Court awards judgment at the instance of the Attorney General.

27. The Court has the power of adjourning from day to day, either to continue the hearing of the witnesses whose depositions have been begun, or for receiving fresh evidence. When a jury has been empannelled, I know of no instance where an adjournment has taken place, the trial never having lasted over the day: but doubtless the Court has power to adjourn.

28. The ordinary course of proceeding on a trial of the party accused, up to the time of sending the case before an *enditement* or first jury, is set forth in answer to preceding questions. In the progress of the trial a variety of incidents may occur, such, for instance, as to the propriety of admitting a co-accused to be heard as evidence for the Crown, questions as to the regularity of the procedure, the admissibility of evidence, the competency of witnesses, &c., &c. These points are usually discussed before the inferior number of the Court, and reproduced before the superior number; and upon the fate of them may sometimes depend the question whether or not the case shall go to a jury. It is not easy to detail all the incidents that may arise in the progress of the proceeding.

29. When the evidence is complete, the case goes before the *enditement*, consisting, as before stated, of the constable and twelve police officers, before whom the evidence is read, and the accused by his counsel, and the Attorney General, are heard. The members of the *enditement* are not sworn, as they act by virtue of their charge: they may, however, be challenged for cause. A majority of seven may acquit or find guilty, either of the whole or part of the charge. The Attorney General cannot appeal in case of an acquittal: and indeed, in strictness, there is no appeal: but, if the accused be found guilty of any part of the charge, he is then said to be "*endité criminellement*," and may demand the benefit of the *Grande Enquête*, or jury of the country, consisting of twenty-four rated inhabitants, one-third of whom are taken from the parish where the offence was committed, and the remaining two-thirds from the two adjoining parishes in equal proportions. The members of the *Grande Enquête* are selected and summoned by the Attorney General. They are sworn: but, before being sworn, the prisoner may challenge any of the number for cause, &c., the admissibility of such challenges being decided by the Court, which must now consist of a full number, or the bailiff and seven jurats. It is necessary that twenty of the *Grande Enquête* should concur to find a prisoner guilty, five dissentients being sufficient to acquit or modify the verdict.

30. If judgment be finally given against the party accused, the viscount, an officer of the Crown, is authorised or directed to carry, or to see carried, into execution the sentence which may be passed upon the prisoner. In capital cases it is the practice to give sufficient time for the party condemned to appeal to the mercy of the Crown.

31. Having been informed by the greffier of the Royal Court that he has already supplied these forms, I do not think it necessary to trouble the learned Commissioners with them again.

32. The bailiff, attorney or procurator general, the viscount, and advocate or solicitor general, hold their offices by patent from the Crown. The jurats are elected by the rate-payers throughout the island for life. All these officers are amenable to Her Majesty in Council. The constables and centeniers are elected by the rate-payers of each parish for three years.

The police officers are chosen by the members of parish assemblies for four or seven years, according to the parish. The last named functionaries may be removed for misbehaviour, &c., by the Court, on an information by the Attorney General.

33. The learned Commissioners having addressed to me a series of questions, and as in all probability others will follow, it may be more convenient to reply to this general inquiry at some future time.

34. The defects in the present system are twofold. One is the want of a true and certain guide as to what is really the criminal law of the island, or for its application; the other relates to the mode of procedure. The remedy for the first will probably be the adoption of a code of criminal jurisprudence wherein offences shall be defined, and the nature and extent of the punishment to be inflicted pointed out. With regard to defects of procedure, those consist, first, in the want of some formal examination of witnesses *upon oath*, before a magistrate, prior to the committal of an accused party. For, although the bailiff or magistrate use as much circumspection as is possible, so that a party may not improperly be committed, still no evidence on oath is taken to warrant any such committal. Another defect is the mode of taking the evidence, and in which the witnesses are heard. Frequently several witnesses are examined before the Court at the same time: and, although their depositions are reduced into writing, many inconveniences must and do arise from this system. It has been suggested, that the witnesses should be heard *vivâ voce* in the presence of the jury: but I doubt whether it would be expedient to make any alteration in this respect, beyond adopting a more certain and expeditious method of proceeding in taking down the evidence. It must not be forgotten that two languages are in use in Jersey, and that one of them is only imperfectly known; and having the testimony in writing greatly facilitates the understanding of it. Besides, it is convenient, because it is important that the same evidence should be produced before the *enditement* and *Grande Enquête*; and, moreover, that, in the event of an application to the Privy Council by a prisoner, the whole case may be properly laid before the Crown. I think the present system of inquiry before the *enditement* anomalous, as it appears to me improper that any part of the police who have, or ought to have, been instrumental in discovering the accused should sit as jurymen on his trial. Another objection to the system is, that the members of the *enditement* are always known beforehand; also, that they are not sworn. I think, at any rate, this jury ought to be indifferently chosen.

*Jersey, 25th July*, 1846.

J. DE VEULLE,
*Bailiff of Jersey.*

JERSEY.

*Answers to Questions.*

SERIES I.

Edward Leonard Bisson, Esq. 31 July, 1846.

No. 2.

*Answers of Edward Leonard Bisson, Esq., one of the Jurats, and Lieutenant Bailiff of the Royal Court, in the Island of Jersey, to the first Series of Questions.*

1. That he has been 14 years one of the Jurats of the Royal Court of Jersey, having been elected, without opposition, in the month of May, 1832; and is also Lieutenant Bailiff, to which office he was appointed in September, 1839, and in which capacity he has frequently presided the Court and States in the absence of the Bailiff.

2. There is but one Court, called the Royal Court, which has jurisdiction in all cases, civil and criminal. Its jurisdiction, in its present form, derives its origin from the constitutions of King John, consisting of 18 articles, by which 12 jurats are to be chosen for life, to sit with the bailiff to try all offences—high treason, and laying violent hands on the bailiff and jurats when in the execution of their judicial duties, excepted.

3. The custom of Normandy, Orders in Council, Acts of the States, and precedents of the Court; though for modern distinctions and decisions English authorities are usually cited.

4. On information being given to the constable, centenier or other police officer, of a crime having been committed, he makes inquiries into the facts of the case, and arrests the accused. The constable then lays the matter before the bailiff, or one of the other magistrates named by him to receive such information, who, after hearing the case, grants a committal to authorize the gaoler to receive the prisoner into his charge. Should the magistrate think the accused ought not to be detained, he liberates, or directs the police officer to take bail for the appearance of the accused before the Court.

5. The inferior Court, consisting of the bailiff or his lieutenant, and two jurats, exercises a summary jurisdiction in cases of minor importance; and, when the offender freely and voluntarily confesses his guilt, the Court proceeds at once to give sentence. If, however, the case is a serious one, the accused is remanded and brought up on a future day before the full Court, consisting of the bailiff and seven jurats, to receive sentence.

6. The proceeding to arrest an accused has already been described.

On an early day after his arrest the party accused is brought before the Court. The accused having selected an advocate, the Attorney General reads the report and the act of accusation or indictment which he has prepared upon such report, and the accused is required to plead. If his counsel put in a plea of Not Guilty, the Court makes an act permitting the Attorney General "*d'informer:*" and witnesses are afterwards called by him to prove the charge, and by the accused to establish his defence. By the same act the accused is sent back to prison or admitted to bail.

7. The evidence is taken down in writing by attorneys of the Court, and signed by the witnesses, in presence of the bailiff and two jurats. As soon as all the evidence is complete, the constable, and 12 of his parish officers, who together form a jury, are called at the instance of the Attorney General: and in their presence and that of a full Court, consisting of the bailiff and seven jurats, the whole of the evidence is read, and the advocate of the accused and the Attorney General are heard. If a majority of the jury declare the accused innocent he is discharged: but, if they find him guilty of the whole or any part of the charge, and he submits, the Court proceeds to pass sentence. He may, however, demand the benefit of the *Grande Enquête*, composed of 24 men, called by the Attorney General. Twenty out of the number must concur to find the prisoner guilty.

8. By the Attorney General, *ex officio*, who may abandon the prosecution when he thinks fit. I am not aware of an instance of a second prosecution for the same offence.

9. When the offender is presented, upon the report of the police, the act of accusation is put into a definite form, and cannot afterwards be altered in form or substance. The prisoner can at all times remodel his plea.

10. The Court decides upon the relevancy of the facts.

11. The facts must be established by the Attorney General if they are denied.

12. The accused is not concluded as to the facts by a denial of their relevancy.

13. Nor by a denial of the facts as to their relevancy. Every latitude is given to the accused.

14. The accused may select his own advocate, and may have one or more, at his option, though only one can plead.

The members of the bar act gratuitously.

15. All witnesses, as well for the Crown as for the accused, are summoned by the viscount, free of expense as regards the accused. Should the witness not appear, or not produce a necessary document, the Court has power to compel by attachment.

16. Evidence is taken on an early day, named by the bailiff, after the accused has put in his plea, in the presence of the Attorney General, and the prisoner and his advocate.

17. No evidence is taken in the absence of the accused and his advocate. All the proceedings are public.

18. After the accused has pleaded the Attorney General calls his witnesses. The accused may also bring forward his witnesses; but he seldom calls them until the case for the prosecution is closed.

19. The accused party may cross-examine the witnesses produced against him, after the Attorney General has examined them to such extent as may be useful to his defence.

20. As a matter of favour to the accused, fresh evidence has been in some cases received after the hearing, before the *enditement* or first jury: but these cases are exceptions to the rule.

21. The whole of the evidence is reduced into writing.

22. The evidence is read at the trial, to establish the guilt or innocence of the accused. Its correctness cannot be questioned unless some defect appear on the face of it.

23. All reasonable latitude is given to the advocate of the accused, in being heard on questions of law and fact, and in examining witnesses.

24. The Attorney General is heard last.

25. The Court decides the law, and the jury the fact.

26. By the Court, at the instance of the Attorney General.

27. The Court has power to adjourn or suspend its proceedings at all stages of them.

28.

29. The Attorney General cannot appeal; but, if the accused is found guilty by the *enditement*, he may claim the benefit of the *Grande Enquête* already described.

30. The Viscount carries the sentence of the Court into execution.

31. I have ascertained that these forms have been supplied to the Commissioners.

32. The Bailiff, the Attorney General, the Viscount, and the Advocate or Solicitor General, are nominated by patent from the Crown: the jurats are elected for life by the rate-payers of the island. These functionaries are amenable to Her Majesty in Council. The constables and centeniers are elected for three years by the rate-payers of their respective parishes: the police officers for four or seven years by the members of parish assemblies. These officers are all removable by the Royal Court, on the information of the Attorney General.

33. I propose replying to this query hereafter.

34. Several measures relating to the criminal law being under consideration of the States, I beg to reserve my opinion until they have been disposed of.

E. L. BISSON.

*Jersey*, 31*st July*, 1846.

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No. 3.

*Answers of Philip Le Maistre, Esq., Jurat of the Royal Court of the Island of Jersey, to the first Series of Questions.*

Philip Le Maistre, Esq.

1. By having since the year 1804 discharged the several municipal offices of the parish wherein I reside, comprising that of constable or mayor, which entitled me to a seat in the States, or Legislative Assembly of the island; and, finally, from a strict and assiduous attendance to the duties of the office of jurat of the Royal Court, to which I have been elected by the voice of my fellow citizens, and which I have now held fourteen years.

2. The Royal Court, which is the only tribunal of the island. Its jurisdiction was instituted by Royal Charter, granted by King John; the Royal Court has jurisdiction over, and takes cognizance of, every offence or crime originating in this bailiwick, save that of high treason.

3. The ancient law of Normandy, as contained in the *Grand Coutumier*, and the Commentaries of *Terrien* and *Rouillé*. The Commentaries of Lieutenant Bailli *Le Geyt* are also appealed to, as well as other authors both French and English.

4. The accused party is taken into custody by the police, and lodged in gaol with the sanction of the bailli or one of the jurats of the Royal Court. A report is afterwards drawn up by the officer who has effected the arrest of the offender, and presented by the chief constable, together with the party accused, before the Court.

5. If the offender is charged with a minor offence, such as a breach of the peace, or disorderly conduct, and his guilt is clearly established, the case is summarily disposed of; the punishment being in every case adapted to the nature of the offence, such as a fine or imprisonment for a short term, &c.

6. The Attorney General then becomes the public prosecutor, and prefers an indictment against the prisoner, founded on the report of the constable; after which the accused, if he pleads "Not guilty," is remanded to prison until a future day, when the Attorney General calls him up again, to hear evidence in support of the prosecution: after this is gone through, the accused party has the privilege of calling as many witnesses as he pleases, to establish his innocence, or to depose to his former good conduct; then he is sent back to prison until the Crown officer deems it expedient to put him upon his trial before the petty jury or *Enditement*.

7. Before the Royal Court, composed of the bailli and twelve jurats. Those members of the Court who have sent the prisoner to trial are deemed competent of acting as members of such Courts.

8. By the Attorney General, who has the power of abandoning the proceedings at every stage of the case, provided the evidence does not warrant any further proceedings in the matter. The prisoner is then liberated by and with the consent of the Court. Such an abandonment can have no effect upon any further accusations.

9. The charge is contained in the act of indictment (*acte d'accusation*), which cannot be varied after it has once been officially recorded; but the prisoner may alter his plea at any stage of the proceedings, and as often as he may think it necessary for his defence.

10. The form is precisely the same: the Court decides both questions, that is, the facts and their relevancy.

11. The case is sent to proof.

12. If the party charged confines himself to the simple denial of the relevancy of the charge, he is supposed to admit the facts: he is therefore concluded as to the facts.

13. When the party charged confines himself to the denial of the facts, he does not thereby admit their relevancy: but the Court frequently, though not always, concludes him as to their relevancy.

14. The party charged has an undoubted right to the assistance of counsel. He selects him himself; and the party so selected pleads gratuitously.

JERSEY.

*Answers to Questions.*

SERIES I.

Philip Le Maistre, Esq.

15. All witnesses, for and against the prosecution, are summoned by the "*Vicomte*": they are compelled to attend to give evidence, both oral and documentary, at any stage of the proceedings.

16. After the party charged has put in his plea, the witnesses are summoned to attend on a future day. Their evidence is taken down in writing, in presence of the Court, by the scriveners ("*écrivains*,") duly appointed to do that duty. The Attorney General is always present, or in his absence the Solicitor General, in order to watch the proceedings, and to see that everything connected with the trial be conducted in a proper manner.

17. At all times, he being always present when the case is heard.

18. When the evidence of the prosecution is at an end.

19. At all times, to any extent, and at every stage of the proceedings.

20. Witnesses may be heard for or against the prosecution, up to the moment previous to his being put upon his trial before the petty jury or "*enditement.*"

21. The whole of the evidence is taken down in writing.

22. After the witnesses have deposed, they are requested to sign their respective depositions, which are afterwards "lodged *au greffe*" until the trial comes on, when they are read by the Crown officers to the members composing the jury. No proof can be adduced against their correctness, the witnesses having deposed upon oath and attested their veracity by their signature. If, however, such a question was ever mooted, the Court, I have no doubt, would give its most serious consideration.

23. The greatest latitude is afforded to counsel as to being heard on questions of fact, or law and examining witnesses.

24. The party accusing is invariably heard last.

25. The facts are decided by the jury; the law is expounded by the Attorney General, and afterwards decided by the Court.

26. Judgment is awarded by the Royal Court.

27. The Court has the power to adjourn or suspend its proceedings at every stage of the case, for want of time to proceed further, or in order to summon other witnesses, or through other similar causes, save and except when the trial is being heard by the jury.

28. The incidents to accusation and trial have, I think, been anticipated by the foregoing answers.

29. The accusing party has no power of appeal in criminal proceedings. The accused party alone has a right of appeal from the petty to the grand jury ("*Grande Enquête*"), whose verdict is final. Still, in every case where capital punishment is awarded, the culprit obtains a certain delay (about three weeks) for the purpose of imploring the Royal clemency, in mitigation of the sentence passed upon him.

30. The "*Vicomte*" or sheriff is bound, *ex officio*, to see that the sentence of the Court be carried into execution.

31. Here I would humbly suggest to Her Majesty's Commissioners the propriety of their applying for the forms used at the various steps of the proceedings, as well as for the oaths administered to the parties concerned, to the "*greffier*" or clerk of the court, in whose custody they are kept.

32. The Bailli, the Attorney General, the Vicomte, and the Solicitor General receive their appointment from the Crown, and hold office only during Her Majesty's good pleasure. The jurats are elected for life by such of the inhabitants as are duly qualified to vote in public elections. The "*greffier*" and the advocates are nominated by the bailli, and hold their office for life. The policemen composing the petty jury are chosen by the parish assembly ("*Assemblée des principaux et officiers de la paroisse*"): their term of office is limited, in town to three and four years, and in the country parishes from four to seven years. They are removable before the expiration of the term of their office for malversation only.

It may be well to observe that the petty jury is taken from the parish wherein the crime is alleged to have been committed.

33. I am not aware that it is in my power to give any further information respecting the mode of proceeding in criminal cases in this island, which, it must be admitted, is rather intricate, owing to the want of statute or written law adapted to the present age, to guide the several public functionaries in the discharge of these respective duties: but, should the Royal Commissioners deem it expedient to point out any deficiency in the foregoing answers, I will most cheerfully endeavour to supply it to the best of my knowledge and abilities.

34. As a member of the States or Legislative assembly, I have always yielded my warmest support to every law (*projet de loi*) which had a tendency to improve the actual laws of the island, both civil and criminal, but especially to an extensive and elaborate *projet* prepared by Her Majesty's Solicitor General, and presented before the States some few years ago: but I regret to state that it has not yet received the sanction of that body, as I believe it would, with a few modifications, very materially tend to simplify the mode of proceeding in criminal cases, affording at the same time every desirable guarantee, both to the accusing and accused parties before the Court. In my opinion the Solicitor General's "*projet de loi sur la procédure criminelle*" embraces, in a great measure, the improvements which have so long been the great desideratum of all persons anxious to witness a reform in the mode pursued with respect to criminal proceedings in the Island of Jersey.

PH. LE MAISTRE.

No. 4.

JERSEY.

*Answers to Questions.*

SERIES I.

Philip de St. Croix, Esq.
8 August, 1846.

*Answers of Philip de St. Croix, Esq., Jurat of the Royal Court of Jersey, to the first Series of Questions.*

1. Those afforded by sitting on various trials, first as member of the "*Grande Enquête,*" and subsequently as Jurat of the Royal Court of Jersey, to which office I was elected in the year 1833.

2. The Royal Court is the only tribunal exercising criminal jurisdiction in Jersey. The jurisdiction of this court originated in the Charter of King John, confirmed by several successive Sovereigns down to Charles the Second. It extends over all crimes and offences, excepting high treason and laying violent hands on the bailiff or jurats, which are specially reserved to Her Majesty in Council.

3. The authorities principally relied upon in the discussion of questions arising upon the criminal law are English authorities: but our criminal law is derived from the ancient law of Normandy.

4. When it is suspected that a party has committed an offence, it becomes the duty of the constable or other police officer, to whom information thereof is given, to inquire into the matter, and, if he think it necessary, to apprehend the party suspected: he then states the particulars of the case to the bailiff, or to a magistrate authorized by the bailiff, who, if he see sufficient grounds, grants a warrant for the prisoner to be given into the custody of the gaoler. The bailiff or magistrate orders the accused party to be liberated, if the proof should appear to be insufficient; or he may direct the police to take bail for the appearance of the prisoner before the Court.

5. The Court exercises a summary jurisdiction in the following cases: breach of the peace, assault and battery, keeping disorderly houses, and other minor offences, and also where the accused party owns himself guilty of the offence with which he is charged.

6. There are no further preliminary proceedings than those stated in the answer to the 4th question. The accused party is brought before the Court on an early day after his arrest, the written report of the police is read to the Court, by the Attorney General, in the presence of the accused party, who is then informed by the presiding magistrate that he may choose a counsel, if he have not already done so; the act of accusation is then read by the Attorney General, who calls on the prisoner to plead thereto: if he plead "Not guilty," the Court remands him to another day, or admits him to bail, according to the nature of the offence, leave being given to the Attorney General, and to the prisoner, to call witnesses.

7. Where the jurisdiction is not of a summary kind, he is tried by a jury in the presence of the Royal Court, composed of the bailiff and not less than seven jurats. The functionaries who have sent the party to trial are capable of acting as members of such Court.

8. The proceedings against the accused party are instituted by the Attorney General, who has the power, at every stage of the proceedings, of causing them to be abandoned. Such an abandonment has the effect of protecting the accused party from any further criminal proceedings for the same offence. I am not aware of any instance to the contrary.

9. The charge against the party accused is put into a written definite form at the commencement of the proceedings. The Attorney General, who is, *ex officio,* the accuser, cannot afterwards vary the form or substance of the charge. The party accused has the power of remodelling or otherwise improving his defence until the "*enditement,*" or first jury, is empannelled.

10. If the party charged admits the facts alleged against him, but denies their relevancy to support the charge, the Royal Court hears the counsel for the accused, and the Attorney General in reply, and afterwards decides upon their relevancy.

11. When the party charged simply denies the facts alleged against him, the Court allows the Attorney General to call witnesses in support of the charge.

12. If the party charged confines himself to a denial of the relevancy of the charges, he is not thereby concluded as to the facts.

13. He is not thereby concluded as to their relevancy.

14. The party charged is entitled to the assistance of counsel: he may have as many as he pleases; but only one is allowed to plead for him: counsel is chosen by the party accused, or, if he declines to select any, then by the chief magistrate. Where the party accused is unable to defray the expenses, a member of the bar is obliged to undertake his defence gratuitously.

15. The prosecutor and the accused party are entitled by law to compel the attendance of witnesses, and the production of documentary evidence at any stage of the proceedings, previously to the "*enditement,*" or first jury, being empannelled.

16. Evidence is first received on an early day after the committal of the prisoner; it is taken down in writing by attorneys of the Court in the presence of the bailiff and two jurats, and in that of the Attorney General, of the accused party, and his counsel.

17. The accused party is allowed to hear all the evidence produced against him: no evidence can be taken in his absence.

18. At any stage of the proceedings after the case is sent to proof, the accused party may produce evidence in his behalf; but this is seldom done until after the evidence for the prosecution has been taken.

19. The party accused is allowed to question the witnesses produced against him, after the Attorney General has examined them, and to the utmost extent useful to his defence.

20. The Court has, in some instances, allowed fresh evidence for the party accused to be produced at the very last stage of the proceedings, previously to the "*Grande Enquête,*" or second jury, being empannelled.

21. The whole of the evidence is taken down in writing, in the mode stated in the answer to question No. 16.

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*Answers to Questions.*

SERIES I.

Philip de St. Croix, Esq.
8 August, 1846.

22. It is read to the Court, and to the jury, by the Attorney General. The evidence having been taken down in writing, and signed by the respective witnesses, in the presence of the Court, the prosecutor, the accused party and his counsel, its correctness cannot afterwards be questioned.

23. The counsel for the prisoner has a right to be heard on questions of fact or law: all reasonable latitude is allowed in examining witnesses.

24. The Attorney General, who is the accusing party, is heard last.

25. The Court decides the law, the jury the fact.

26. Judgment is awarded by the Court.

27. The Court has the power to adjourn or suspend its proceedings, at any time until the evidence on both sides is closed, for the purpose of allowing fresh evidence to be produced, or of finishing that which is commenced. The Court never suspends or adjourns its sittings when once the jury is empannelled, except for a short space of time, seldom so much as an hour, and that only during very long trials.

28. With regard to the incidents to accusation and trial, I have not anything to add to the preceding answers.

29. The accusing party has no power of appeal if the accused party is acquitted by the "*enditement*," or first jury, composed of thirteen members of the police, a majority of whom can acquit or condemn: but, if found Guilty by that jury, the accused party has the right of appeal to the "*Grande Enquête*," composed of twenty-four respectable men from three parishes of the island, eight from each parish, twenty of whom must agree to a verdict of "Guilty," as five are a sufficient number to return a verdict of "Not guilty:" the members of the "*Grande Enquête*" are convened by the Attorney General, and may be challenged by the accused party for causes the propriety of which is decided by the Court.

30. If judgment be finally against the accused party, it becomes the duty of the Viscount to carry it into execution: but of late, when sentence of death has been passed, a sufficient delay has been granted by the Court to enable the convict to implore the Royal clemency.

31. The forms used in the proceedings are explained in the preceding answers: for the oaths taken by the members of the Court and the witnesses, respectively, I beg leave to refer to the code of laws for the island of Jersey, confirmed by His Majesty in Council on the 28th day of March, 1771.

32. The Bailiff, the Attorney General, the Viscount and the Solicitor General are appointed by the Crown. The jurats are elected for life by the rate-payers of the whole island. The above mentioned functionaries are amenable to the Sovereign in Council. The constables and centeniers are elected for three years, by the rate-payers of their respective parishes, and are removable by the Court on the prosecution of the Attorney General.

33, 34. The States of this island having appointed a committee to revise the criminal law, I am not at present prepared to suggest any improvement thereto.

*August 8th*, 1846. PHILIP DE ST. CROIX.

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No. 5.

Philip W. Nicolle, Esq.
12 August, 1846.

*Answers of Philip W. Nicolle, Esq., Jurat of the Royal Court of Jersey, to the first Series of Questions.*

1. As jurat of the Royal Court since 1837.

2. The Royal Court, composed of the bailli, or chief magistrate, and twelve jurats. Its jurisdiction extends to all crimes and offences, high treason and laying violent hands on the Queen's representatives or ministers in the island excepted, which are specially reserved to Her Majesty in Council. It derives its origin from the charter of King John, confirmed by several successive sovereigns.

3. The criminal law is based on the ancient Norman law: but, as that of England has become less sanguinary, it is now chiefly followed; and the English authorities, Blackstone and others, are now followed, being cited and used by the prosecution for the Crown.

4. On a complaint being made to the constable, or other police officers, or if they have occasion to suspect a crime has been committed, they investigate the case, and, if there appear sufficient grounds to warrant it, they arrest the party, and report the case to the chief magistrate, who issues, if there is sufficient ground to warrant it, an order for his provisional detention, to enable the officers to deduce the facts to writing; when they are submitted to the Attorney General for his consideration. The chief magistrate may order his immediate release, if he does not see sufficient grounds to detain the accused; and he may, if the charge is not of a serious nature, authorise that he be admitted to bail.

5. The Court does not exercise summary jurisdiction, as a magistrate in England, though prisoners are tried before the bailli and two magistrates for minor offences: but the Crown prosecutor directs the proceedings; and prisoner is always heard by counsel in these cases.

6. There are no preliminary instructions beyond what I have before mentioned in the 4th answer. Prisoner is brought up before the Court on an early day; the report of the police officer having been considered by the Attorney General, he reads it to the Court, in presence of the prisoner. The bailli then asks prisoner if he have engaged counsel, and, if not, recommends him to select one from the gentlemen composing the bar, called "*Avocats*." After he has done so, the Attorney General reads the indictment or act of accusation, to which prisoner pleads Guilty or Not guilty; when the Court makes an act accordingly. If the latter, he is sent to prison, and the Crown and prisoner are allowed to call witnesses for the prosecution and defence. Prisoner's counsel may move that he be admitted to bail; which, if the offence is not of a serious nature, the Court allows.

7. Prisoners are tried by a jury of 13: the majority acquits or condemns: they may, if found Guilty, appeal to a second jury, composed of 24 members, five of which are sufficient to acquit them. Evidence is heard before the bailli and two jurats, and written down in presence of the prisoner and his counsel. When the whole evidence for and against the prisoner is concluded, the first jury is called, and the evidence is then read. The prisoner is heard in his defence, and the Attorney General for the prosecution: seven jurats are required to be present. The chief magistrate, who gives the orders for the detention of the prisoner, cannot be said to have sent him to trial, as this is done on his appearing before the Court by the Attorney General, who is the public prosecutor for all crimes. The jurats composing the Court, before whom prisoner is first brought up, may sit during the subsequent stages of the trial.

8. By the Attorney General, who may drop proceedings, at any stage, if the evidence cannot substantiate the charge. It is generally done by an act of the Court. I know of no case in which a person so discharged has again been tried; and I do not consider that it could be done, such being tantamount to an acquittal.

9. On the prisoner being first brought before the Court after the report of the police has been read, and he has selected an advocate, the Attorney General presents the indictment or charge in writing: it cannot afterwards be altered or modified. The accused may amend his plea during any stage of the proceedings, to the time when the first jury is empannelled.

10. If the prisoner admits the facts but denies their relevancy to support the charge, he is heard by counsel, and the Attorney General in reply: and the Court decides as to their relevancy.

11. The Attorney General is empowered by the Court to call witnesses in support of the charge, and prisoner those required for his defence.

12. He is not.

13. No.

14. From the earliest times a prisoner in this island has always had the benefit of being heard by counsel to examine witnesses and plead in his behalf; he is not restricted as to the number; one only can however be heard. Prisoners select their own counsel; but, if they will not, the bailli assigns them one. If unable to pay for counsel, one of the members of the bar assists them gratuitously.

15. Both parties can summon witnesses: if they fail to attend, they are fined, and ordered to be taken in custody by the vicomte or sheriff to ensure their appearance: and any documentary evidence may be produced during any stage of the proceedings, up to the period of the *enditement* or first jury retiring.

16. On a day fixed by the bailli, after being informed by the Attorney General that he is prepared to proceed in the case, the Court, composed of the president and two jurats, sit for the purpose of hearing evidence, which is committed to writing by the attorneys, summoned to attend for the purpose. The public prosecutor and prisoner are always present.

17. At all stages of the proceedings prisoner must be present; no evidence can be taken in his absence.

18. A prisoner may hear evidence at any time after he has been first brought up: but he generally reserves his witnesses until those for the prosecution have been heard.

19. After a witness for the prosecution has been examined by the public prosecutor, prisoner's counsel may cross-question him to the extent which may be useful and relevant to his defence.

20. No fresh evidence can be produced by the Crown after the *enditement*, or first jury, is empannelled. The Court has in some few cases allowed prisoner to bring forward evidence to the very last stage of trial, that is to say before the second jury.

21. The whole.

22. It is read to the jury or juries; and, having been taken in presence of the accuser and the accused, and signed by the witnesses, its correctness cannot be impugned by either party.

23. Counsel for prisoners are allowed every possible latitude in arguing questions, both of fact and law, as well as in examining witnesses.

24. Prisoner, after the charges have been read, and the evidence has been gone through, is heard in his defence; and the Attorney General afterwards supports the charge, and is by law entitled to be heard last.

25. The Court, composed of the bailli and at least seven jurats, decide the law, and the juries the fact.

26. By the Court being called upon by the Attorney General, who gives his opinion as to the punishment to be awarded.

27. The Court has authority to adjourn from one day to another, until the evidence is completed. There is no instance in which it has adjourned, except for a very short period, after once the jury is empannelled.

28. This answer is given in the foregoing one; and I have nothing to add.

29. If a prisoner is acquitted by the first jury, the public prosecutor cannot appeal: but, if found Guilty, prisoner has right of appeal to the second jury. The *enditement*, or first jury, is composed of thirteen members of the police of the parish in which the offence is committed, presided by the constable or one of the centeniers: their verdict is returned by the majority. The second jury is selected by the Crown, and is composed of twenty-four members of three different parishes: five are sufficient to acquit; prisoner may challenge jurymen for cause, the Court deciding thereon. Questions of law and evidence, which have been decided by two jurats whilst taking evidence, may be argued before the full Court, on the day when the first jury is convened.

30. The vicomte or sheriff is charged with the execution of the sentence of the Court. When transportation is pronounced, the sanction of Her Majesty must be obtained: and, where sentence

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Philip W. Nicolle, Esq.
12 August, 1846.

of death is passed, a delay is granted, to enable the convict to implore the pardon of the Sovereign, or a commutation of punishment.

31. The first part has already been answered before. Witnesses are sworn to declare the truth, the whole truth, and nothing but the truth, as they will answer to Almighty God, &c. The police composing the first jury sit by virtue of the oath taken by them on being admitted to office. The second jury are sworn by the bailli after prisoner has declared he has no cause of challenge. Forms of the oaths and proceedings can be had from the clerk of the court.

32. The Bailli, Attorney General, Vicomte and Solicitor General are appointed by the Crown. The jurats are elected by the rate-payers of the twelve parishes of the island. The constable and centeniers by the electors of their respective parishes for 3 years, the other police officers by the vestry for terms, varying from 4 to 7 years according to the law. These may be removed after trial by the Court. The other functionaries are answerable to Her Majesty in Council.

33 and 34. The states or legislative body of the island have now under their consideration the revision of the criminal judicature, it being proposed that the evidence be taken *vivâ voce* before the jury, and that the jurymen should be selected from the rate-payers by ballot, that fixed periods or assizes for the trial of prisoners should be appointed, which will be preferable to the present system. I would further suggest that one of the jurats should sit daily in rotation to hear the charges of the police, and for the purpose of disposing summarily of minor cases arising from persons interrupting the public peace, from drunkenness, vagrancy and other petty offences.

*Jersey, August 12th,* 1846. PH. W. NICOLLE.

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No. 6.

*Answers of Charles Bertram, Esq., one of the Jurats of the Royal Court of Jersey, to the first Series of Questions.*

Charles Bertram, Esq.
1 August, 1846.

1. I have been centenier and constable of the Parish of Grouville, and am now one of the Jurats of the Royal Court.

2. The Royal Court is the only court having jurisdiction in criminal cases. Its jurisdiction is derived from the constitutions of King John, confirmed by several successive sovereigns, and extends over all crimes and misdemeanors except high treason and laying violent hands on the Queen's ministers whilst in exercise of their office.

3. The criminal law of Jersey is founded on the ancient custom of Normandy: but English authorities are cited in support of modern distinctions. Also Orders in Council, Acts of the States, and precedents of the Royal Court.

4. When information is given to the constable, centenier or other police officer, that a crime has been committed, he immediately inquires into all the circumstances, and arrests the party accused.

He afterwards lays the matter before the bailiff, or some other magistrate named by him to hear those informations; who, after investigating the case, grants a committal authorising the gaoler to receive the prisoner into his custody. If the magistrate should not think the case to warrant his detention, he orders the party accused to be liberated, or directs the police officer to take bail for the appearance of the accused before the Court.

5. The Court exercises a summary jurisdiction in all minor offences, and also where an accused submits.

6. There is no preliminary investigation other than has already been stated. At the first sitting of the Court, a party accused is usually brought up before that tribunal, when he is presented upon a written report of the police by the Attorney General. The accused having chosen an advocate, the Attorney General first reads the Report, and then an Act of Accusation or indictment, which he has prepared beforehand, and the prisoner is called upon to plead. If the plea his advocate puts in for him be one of "Not guilty," the Court makes an act which enables the Attorney General and the accused to call witnesses, the one to prove the truth of the accusation, the other his defence. The accused is by the same act remanded to prison, or admitted to bail.

7. Before the Royal Court composed of the Bailiff and two Jurats.

8. By the Attorney General, who is public prosecutor in all cases, and who only has power to abandon the prosecution, which he may do at any stage of the proceedings if he is not satisfied with the proofs, &c.

I do'nt know of any instance where, having abandoned a prosecution, another has been instituted against the same party for the same offence. When the Attorney General abandons a prosecution, he generally obtains an act of the Court for the purpose.

9. When the accused is first brought before the Court on the report of the police, the accusation charge is put into a written definite form by the Attorney General, who cannot afterwards alter or vary the form or substance of it. The party accused may at any time remodel or improve his defence.

10. If a party accused admit the facts but denies their relevancy, the Royal Court, after hearing the Attorney General and the advocate for the accused, decides on their relevancy.

11. The Attorney General is put to the proof of the facts.

12. He is not concluded thereby.

13. Nor by a denial of the facts is he concluded as to their relevancy.

14. In Jersey an accused has at all times been allowed counsel to advise and plead for him. He may have more than one if he pleases; but only one can plead. If the accused does not select an advocate, one is chosen for him by the chief magistrate. The members of the Bar always act gratuitously in criminal cases.

Charles Bertram, Esq.
1 August, 1846.

15. Witnesses both for the Crown and the accused are summoned by the Viscount: and, if they should not attend, the Court can order them to be seized, and has also power to compel the production of documentary evidence at any stage of the proceedings.

16. After the accused has put in his plea, a day is named to hear witnesses. The evidence is taken in writing in the presence of the Court consisting of the Bailiff and two Jurats, and in the presence of the Attorney General, the accused and his advocate.

17. The party accused hears all the evidence produced against him. No witnesses can be heard in his absence, or that of his advocate.

18. He can call evidence at any stage of the proceedings, after the matter has been sent to proof: but an accused seldom brings forward his witnesses until the evidence for the prosecution is closed.

19. After the Attorney General has finished examining his witnesses, the accused or his advocate may cross-examine them to the fullest extent.

20. Except as a matter of indulgence, fresh evidence is not allowed to be called after the case has come before the "*Enditement*" or first jury.

21. The whole of the evidence is reduced into writing.

22. It is afterwards read to the jury on the trial of the accused, for the purpose of his conviction or acquittal. As the evidence is always taken in open court, by attorneys of it, in presence of the Attorney General, the prisoner and his advocate, no question can afterwards be raised as to its being correct, unless the defect appear on the face of it.

23. The advocate of the party charged has the greatest latitude allowed him in being heard on questions of law and fact, and in examining witnesses.

24. The Attorney General is heard last.

25. The Court is to decide the law, and the jury the facts.

26. Judgment is awarded by the Court at the instance of the Attorney General.

27. The Court may adjourn or suspend its proceedings from one day to another, at all stages of them, for any reasonable cause.

28. Many incidents may arise in the course of the proceedings, such as turn on the regularity of procedure, &c., &c.

29. There is, strictly speaking, no appeal in criminal cases. When all the evidence is taken, a jury called the "*Enditement,*" consisting of the constable and twelve police officers of the parish where the offence was committed, is assembled, before which the evidence is read and the counsel for the accused and Attorney General are heard. Seven of this jury must concur in a verdict to acquit the accused or to find him guilty of the whole or any part of the charge. The Crown has no appeal; but, if the prisoner is found Guilty, he may demand the benefit of the *Grande Enquête,* a second jury, composed of 24 gentlemen, eight selected from the parish where the offence was committed, and eight from each of the two adjoining parishes. The *Enditement* is not sworn; but the *Grande Enquête* is: and both are liable to be challenged. Of the *Grande Enquête,* 21 must agree in the verdict to pronounce a prisoner guilty. On both trials there must be a full Court, consisting of the bailiff and seven jurats, before whom all questions of law, &c., may be discussed.

30. If judgment be given against the accused, it is the duty of the Viscount or Sheriff to see to its execution.

31. It is understood that these forms have already been supplied by the greffier of the court.

32. The Bailiff, Attorney General, Viscount and Advocate General are appointed by patent from the Crown. The jurats are elected for life by the rate-payers throughout the Island. The constables and centeniers are chosen by their several parishes for three years, and the police officers for four or seven years, according to the parish. The Bailiff, Attorney General, Viscount, Advocate General and Jurats are amenable to Her Majesty in Council, the other functionaries to the Royal Court.

33. Other information will be given in reply to the second series of questions.

34. As there is a bill before the States relative to the criminal law, I beg to reserve my opinion until after that measure has been considered.

*Jersey, 1st August,* 1846. C. BERTRAM.

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## No. 7.

*Answers of John Le Couteur, Esq., one of the Jurats of the Royal Court of the Island of Jersey, to the first Series of Questions.*

John Le Couteur, Esq.

1. I was elected to the office of Jurat of the Royal Court in the year one thousand eight hundred and forty, after having filled several public offices.

2. The Royal Court.—Its jurisdiction is derived from a charter of King John, confirmed by other sovereigns, and extends over all crimes and offences, high treason and the laying of violent hands on the Queen's officers excepted.

3. Precedents, and some laws passed by the states of the island that have received the Royal Assent.

4. Generally by the arrest of the person by the constable or one of the centeniers of the parish, when they have collected sufficient information as to the guilt of the suspected party: the chief magistrate, or other magistrate appointed by him, may grant a committal or order the party to be liberated or admitted to bail. On an early day, the constable of the parish presents the party arrested, together with a report stating the principal facts that have come to his cognizance. In other cases, when the nature of the offence or the information obtained is not such as to warrant the arrest of the person, a report is presented to the Court through the

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Attorney General; and the Court may then order the party to be apprehended or merely summoned to appear. When a fine only has been incurred, the information is laid before the Attorney General, who summons the party to appear, or obtains a writ from the chief magistrate to the same effect.

5. For petty offences the Court exercises summary jurisdiction: in such cases, if the suspected party denies the facts laid to his charge in the report of the constable or centenier, the Court orders witnesses to be called on a future day, and, after hearing *vivâ voce* evidence, if the charge is proved, passes sentence.

6. The Attorney General presents a written accusation or indictment, grounded on the report of the constable or centenier, against the suspected party before the inferior number of the Court, composed of the bailiff and two jurats: if the prisoner pleads Not guilty, the Attorney General is allowed to call witnesses on a future day, when their evidence is taken down in writing. Witnesses for the defence may also be called: in the mean time the prisoner is either admitted to bail or sent to prison.

7. The evidence is taken down in writing before the inferior number of the Court, composed of the bailiff and two jurats, unless a witness is on the eve of leaving the island or is unable through sickness to attend the Court, when the evidence is taken before the viscount. When the evidence for the prosecution and the defence is complete, the bailiff summons a full Court, composed of seven jurats at least, and a jury is empannelled before whom the whole evidence is read and trial takes place.

8. By the Attorney General, who may abandon the proceedings, when it appears that the evidence will not support the charge: this is generally done with the sanction of the Court, when an act to that effect is then recorded. It is tantamount to an acquittal.

9. When the case is to go before a jury, the accusation or indictment prepared by the Attorney General is read to the prisoner, when he is first presented in Court. The accusation cannot afterwards be varied.

10. The question is argued before the Court.

11. The Court orders evidence to be heard on a future day; if no *accusation* or indictment is presented by the Attorney General, the evidence is heard on the report of the constable or centenier *vivâ voce:* but when there is an *accusation,* as the case must go before a jury, the evidence is taken down in writing.

12. He is not concluded.

13. He is not concluded thereby.

14. Yes, of a counsel to examine the witnesses, plead and assist him during the whole proceedings. He is chosen by the prisoner, and, if he does not select one, by the Court. The advocates are bound to assist a prisoner without means gratuitously. The prisoner is at no expense for summoning witnesses, or taking down their evidence in writing.

15. The accusing and accused party are entitled by law to compel the attendance of witnesses, and the production of documentary evidence necessary for the prosecution or the defence.

16. On an early day appointed by the chief magistrate, after the accused has denied the facts or pleaded Not guilty. It is taken down in writing by the attorneys of the Court, before the inferior number, and in the presence of the Attorney General and the accused party. Any question that may arise on the evidence is argued before the inferior number of the Court, but may be also submitted to the full Court.

17. No evidence can be received in his absence.

18. After the evidence for the prosecution has been heard, if his witnesses are not summoned or are not present, the case is put off to a future day to hear them.

19. The accused party is allowed fully to cross-question witnesses after they have been examined by the Attorney General.

20. Generally when the first jury is empannelled: in some cases the Court has allowed witnesses to be heard for the defence after the verdict of the first jury.

21. When the case goes before a jury the whole evidence is reduced to writing.

22. It is read to the jury. As the evidence has been written down in the presence of the accused party, and kept in the custody of the clerk of the Court, such cases do not occur.

23. All reasonable latitude is allowed to counsel to examine witnesses and to raise questions of law which are argued before the Court.

24. The Attorney General, as public prosecutor.

25. The Court decides the law: and, when an accusation has been presented by the Attorney General, which is the case when the alleged offence has any gravity, the juries decide the fact. The first jury is composed of thirteen members of the police of the parish where the offence has been committed, seven of whom may return a verdict of Guilty or Not guilty. The accused, but not the prosecutor, may appeal to a second jury called *Grande Enquête,* composed of twenty-four gentlemen, chosen by the Attorney General, eight from the parish where the offence has been committed, and eight from two of each of the adjoining parishes. Twenty must agree to return a verdict of Guilty; otherwise the party is acquitted.

26. By the full Court when the case has been before a jury.

27. Yes,—to allow the prosecutor or the accused to call further evidence, until the jury is empannelled.

28. A general outline of the proceedings has been given in the preceding answers.

29. The accused only may appeal from the first jury to the *Grande Enquête.* When the *Grande Enquête* is called, the evidence is read, the counsel for the accused presents the defence, and the Attorney General is heard in support of the previous verdict. If the accused be found Guilty, the Court passes sentence, the Attorney General being heard as to the punishment to be awarded, and the counsel of the accused in mitigation.

30. The Viscount carries the sentence of the Court into execution.

31. The Crown Officers or the Clerk of the Court will be enabled to furnish the Commission with forms of the proceedings. The several oaths administered are found in the code of laws or regulations passed by the States in seventeen hundred and seventy one.

32. The Bailiff and the Crown Officers hold their offices by letters patent. The jurats are chosen for life, by the rate-payers of the island. The constables and centeniers are elected by the rate-payers of their parish for three years. The police officers, who assist the constable and centeniers, are chosen by the parish assemblies. The police officers are removable by the Court, and the other functionaries by Her Majesty in Council.

33, 34. The revision of the Criminal Laws is now before the States. Reference will be made to these questions in the answers to the subsequent series.

JOHN LE COUTEUR.

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No. 8.

*Answers of Ph. Picot, Esq., one of the Jurats of the Royal Court of Jersey, to the first Series of Questions.*

Ph. Picot, Esq.

1. I have occupied various civil offices, by which I have become acquainted with many proceedings in criminal cases.

2. There is but one tribunal,—the Royal Court, which takes cognizance of all offences, except high treason and laying violent hands on the Queen's officers. It owes its origin to enactments of King John.

3. The authorities principally relied upon in the discussion of questions arising on criminal law are English authorities.

4. When it is suspected that a party has committed an offence, it is the duty of the constable, or other police officer to whom the complaint is made, to investigate the matter, and, if it appears to him that the suspicions are grounded, he apprehends the offender. If the offence is not of a serious nature, the accused is admitted to bail, to appear before the Court on a certain day; but, if the offence is of a serious nature, the officer obtains from the chief magistrate, or other magistrate authorized by him, a warrant or order for the gaoler to receive the accused into custody.

5. The Court exercises summary jurisdiction, only with respect to slight offences.

6. The accused party being in prison, it is the duty of the police of the parish in which the offence has been committed to bring the prisoner before the Court, at one of its first sittings, which is generally the next Saturday after his incarceration. The Attorney General then reads the report of the officer who apprehended the accused, and also a written charge, framed on that report. The prisoner chooses his counsel amongst the gentlemen of the bar: and, if he pleads "Not guilty," the Court either admits him to bail, or remands him to prison, and grants leave to the Attorney General to call up witnesses to sustain the charge, and to the accused to prove his innocence.

7. When the jurisdiction is not of a summary kind, he is tried by a jury in the presence of the bailiff and seven jurats at least. The bailiff and the two jurats, who have sent the party to trial, have only decided to hear witnesses, and to remand the accused to prison. They can always act as members of the Court.

8. The Attorney General institutes the proceedings: and, if no satisfactory evidence is adduced to sustain the charge, the Court liberates the prisoner, at the recommendation of the Attorney General.

9. At the outset of the proceedings, the charge against the accused is put in a definite written form: and, as it is framed on the report, it must always be substantially the same. The plea of the accused may be varied before evidence is completed; but I know of no instance in which the charge has been altered.

10. If the party charged admits the facts alleged against him, but denies their relevancy to support the charge, his counsel is first heard, then the Attorney General; after which the Court decides.

11. When the party charged simply denies the facts, his denial alters not the usual mode of proceeding, which is to hear witnesses and empannel a jury.

12 and 13. Whether the party charged confines himself to a denial of the relevancy of the charges, or to a denial of the facts, he is not thereby concluded as to their relevancy, nor as to the facts.

14. The party charged is entitled to assistance of counsel and other legal advisers, the number of whom is not limited; but only one counsel is allowed to address the jury. They are selected by the party accused: and, if he is unable to defray the expenses of legal assistance, a counsel is obliged, by his oath, to render him all the assistance in his power.

15. All witnesses, selected by the accusing or accused party, are compelled by law to give evidence before the Court: and, as for documents, they can be produced at any time, provided they are read to the jury before it retires to frame its verdict.

16. After the Attorney General has read his charge, the evidence is next taken, at another sitting of the Court. The bailiff orders a certain number of attorneys of the Court to write down all questions and and answers in his presence, and in that of two jurats, the Attorney General, the accused and his counsel.

17. The party accused is always present, as above stated, when evidence is taken for or against him.

18. After witnesses have been heard to prove the charge, the accused is allowed to produce evidence to meet that produced against him, though sometimes some of his witnesses are heard first.

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Ph. Picot, Esq.

19. The accused is allowed to question the witnesses produced against him, when the Attorney General declares that he has no more questions at that moment. The accused is not limited as to the number of his questions.

20. Fresh evidence may be produced either for or against the party accused, as late as the last day, even though the members of the jury should have taken their seats: but, in very few cases, fresh evidence has been heard in favour of the accused before the "*Grande Enquête*."

21. The whole evidence received at the respective stages of the proceedings is taken down in writing, as described in the 16th answer.

22. Evidence taken down in writing is lodged "*au greffe*," and afterwards read to the Court and to the jury by the Attorney General, and can never be disputed.

23. The counsel of the party charged has the same privilege as the Attorney General, to examine witnesses. He can be heard on questions of law before the Court, both before and after the verdict is delivered, and on questions of fact before the jury.

24. The accusing party is heard last.

25. The Court decides the law, and the jury the facts.

26. Judgment is awarded by the Court.

27. The Court adjourns its proceedings, to hear other witnesses, but never when a jury is sitting to try a prisoner. During a long trial, it may suspend its proceedings for a few minutes; then it is the duty of the Viscount to see that the jury has no communications with any one.

28. Contained in previous answers.

29. The accusing party has no right of appeal if the prisoner is acquitted by the "*enditement*" or jury; but, if found Guilty, the prisoner may appeal to the "*Grand Enquête*," composed of twenty-four of the most respectable men of three parishes, eight of each parish. They are selected by the Attorney General. If twenty of them find the prisoner Guilty, the Court, after hearing his counsel in mitigation, and the Attorney General in his conclusions, pronounces judgment.

30. It is the duty of the Viscount to see the judgment of the Court carried into effect.

31. The forms used at the various steps of the proceedings are contained in the books of the Court, and the oaths in the civil code of 1771.

32. The Bailiff, the Attorney General and the Viscount hold their offices by patent from the Crown. The jurats are elected for life, by the whole body of the electors of Jersey. The constables and centeniers are elected for three years, by the rate-payers of their own parishes. The vingteniers and "*officiers du connétable*" are elected by the vestries of their respective parishes, for a period varying from three to seven years. The Court can remove the police officers; the other functionaries are amenable only to her Majesty in Council

33. The "*enditement*" or jury is composed of thirteen police officers,—the constables, centeniers, vingteniers and "*officiers du connétable.*" If seven of them return a verdict of "Not guilty," the prisoner is discharged by the Court.

Two persons nearly related cannot sit in the jury, nor in the "*Grande Enquête.*"

The prisoner can refuse any juryman for specified reasons; and the Court decides upon their propriety.

34. A defect, which appears to me to exist in the present system, is the formation of the jury and the "*Grande Enquête.*" I would not say that the present mode of acting is disadvantageous to the accused, nor that it secures not the ends of justice: but I believe that, if a list were framed containing the ablest men in the island, sitting by turn as jurymen, it would be an improvement.

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No. 9.

John Pelgué, Esq.

*Answers of John Pelgué, Esq., Jurat of the Royal Court of Jersey, to the first Series of Questions.*

1. As a member for many years of the police of the parish of St. Saviour, I have often been called upon to act as a juryman on the *Enditement*, or first jury in criminal cases; subsequently, I have served as member, sometimes as foreman, of the *Grande Enquête*, or second trial of criminals, and have thus had opportunities of becoming practically acquainted with the criminal law in Jersey. I may add that, in early life, I spent a year or two in the office of a *denonciateur* or Deputy Sheriff.

2. The Royal Court alone. The origin of its jurisdiction in criminal cases is coeval with the institution of the Court itself under the Constitutions of King John; which Constitutions have been confirmed by Kings Henry III, Henry VII, and Charles II. The jurisdiction of the Royal Court extends over all crimes and offences, except high treason and laying violent hands on the Queen's Ministers, which are reserved for the judgment of Her Majesty in Council.

3. The laws of the old Duchy of Normandy form the basis of our criminal law. Preceding decisions of the Court, and the more eminent English writers on criminal law, are frequently quoted as authorities by the advocates who plead.

4. When a crime has been committed, the constable, centenier or other police officer of the parish wherein it has occurred, upon being applied to by the person aggrieved, arrests the suspected delinquent; he then lays all the circumstances of the case, so far as he has been able to discover them, before the chief magistrate, or another magistrate authorised by him, who, if after examination he sees sufficient grounds, issues a warrant or committal, which the police officer takes to the gaoler, in whose custody the prisoner is then placed. If the magistrate should consider the case not sufficiently proved against the prisoner, he may direct his liberation; or, if the offence be a light one, he may order that the delinquent be admitted to bail for his appearance before the Court.

5. The Royal Court exercises summary jurisdiction in cases of breach of the peace, assault and battery, infringement of prohibitory laws, keeping disorderly houses, and other minor offences; also when a prisoner pleads Guilty.

6. No other preliminary proceedings than those stated in the answer to the 4th question. We left the prisoner in the gaoler's custody: the former is, on an early day after his arrest, brought up before the Court by the police officer who first arrested him, and who presents a written report of all the circumstances of the case. The Attorney General, with whom the police officer's report had been previously left for consideration, reads it to the court, the prisoner being present. The chief magistrate directs the prisoner to select a counsel to conduct his case: the Attorney General next reads the act of accusation, and calls on the prisoner to plead, under the advice of his counsel. If the plea be one of *Not guilty*, the Court makes an act allowing the Attorney General and the prisoner to call witnesses to appear before it: and the prisoner is either remanded to gaol or admitted to bail, according to the nature of the offence.

7. Before the Royal Court, composed of the chief magistrate or bailiff and two jurats; the former, who, on the police officer's information, sanctioned the incarceration of the prisoner, appears not strictly speaking to have sent him to trial: he is only committed for trial by the Court which hears his accusation by the Attorney General.

8. Proceedings before the Court are instituted by the Attorney General, who may at any period give up the prosecution, if adequate proofs be wanting. There seems to be no instance in which the Attorney General, having given up a prosecution, has attempted to institute a second prosecution against the same individual for the same offence. When a prosecution is abandoned, the Attorney General usually obtains an act of the Court for that purpose.

9. On the first appearance of a prisoner before Court, the charge against him is, as before explained, made against him in a written and definite form by the Attorney General, the *ex officio* accuser, who cannot afterwards change the accusation in form or substance. The prisoner may remodel or improve his defence at any stage of the proceedings previous to the empannelling of the *enditement*, or first jury.

10. In this case, the Royal Court, after hearing the prisoner's counsel and the Attorney General on the question, decide upon the relevancy of the facts admitted, to support the charge.

11. The Attorney General is allowed by an act of the Court to call witnesses in support of the charge.

12. He is not.

13. He is not.

14. A prisoner may have as many legal advisers as he chooses; but only one counsel is allowed to plead for him; this one he may select; if he refuses to do so, the chief magistrate does it for him: if the prisoner be unable to pay the usual fees, the gentlemen of the Bar undertake his defence gratuitously.

15. The prosecutor and the prisoner can compel by law the attendance of any witnesses, and the production of any documentary evidence deemed essential to their case, at any stage of the proceedings previous to the empannelling of the *enditement* or first jury.

16. On an early day after the prisoner's committal, the chief magistrate convenes a Court composed of himself and two jurats, when evidence is taken down in writing by attorneys, the Attorney General and the prisoner being present.

17. No witnesses can be heard except in the prisoner's presence.

18. The prisoner's witnesses are usually brought up after the case for the prosecution is closed; but, if he has a special reason, he may do so before.

19. The prisoner is allowed to cross-examine the witnesses produced against him to such extent as may be useful to his defence.

20. No fresh evidence may be produced after the *enditement* or first jury is empannelled.

21. The whole of the evidence is taken down in writing.

22. It is read to the jury. The witnesses having deposed in the presence of the Court, the prosecutor and the prisoner, their evidence cannot subsequently be impugned.

23. The prisoner's counsel has the privilege of being heard, and of examining witnesses on questions of fact or law at any stage of the proceedings.

24. The Attorney General or public prosecutor has the right of being heard last.

25. The chief magistrate and the jurats decide all points of law; questions of fact are submitted to the *enditement*, a jury composed of twelve police officers presided by their constable or centenier, generally selected from the police of the parish wherein the crime has been committed. Any of the jury may be challenged, for cause, on the justness of which the Court (which must now be composed of the chief magistrate and seven jurats at least) decides. The *enditement* hear all the evidence read, as well as the pleading of the prisoner's counsel, with the reply of the Attorney General, and then retire to consult on their verdict. If unanimous, their foreman declares the verdict to the Court in the name of all; but, if they disagree, each individual member goes up to the chief magistrate's seat, and delivers his opinion. A majority will convict or acquit the prisoner: in case of conviction, the prisoner may appeal to the *Grande Enquête*, a jury selected by the Attorney General, and composed of twenty-four gentlemen, a third of whom must be inhabitants of the parish wherein the crime was committed, and the remaining two-thirds of two contiguous parishes, a third in each. The proceedings before the *Grande Enquête* are precisely the same as before the *Enditement*, the only difference being that twenty out of the twenty-four jurors must agree to convict the prisoner.

26. By the Court, at the instance of the Attorney General.

27. The Court has the power to adjourn, when engaged in hearing evidence: but, when once a jury is empannelled, the Court does not suspend or adjourn its sitting, unless it be, in a long case, for a short time, seldom exceeding an hour.

28. The material incidents are detailed above.

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29. The Attorney General cannot appeal if the prisoner be acquitted; but, if found guilty by the *Enditement*, the prisoner may appeal to the *Grande Enquête*, as before stated. Questions of evidence decided by an inferior court (that is one composed of two jurats and the chief magistrate as president) may be re-argued before the full Court, on the day when the *Enditement* is convened.

30. The Viscount is the officer charged to see the act or judgment of the Court carried into execution. Latterly, when judgment of death has been pronounced, a delay has been granted to the convict of two or three weeks, to enable him to petition the Crown for mercy.

31. The oaths of some of the officers mentioned above are long, and would not assist the Commissioners in their inquiry. All the members of the Court are sworn on assuming office: the police officers are sworn at the same time; the members of the *Enditement* are consequently not sworn as jurymen; but the members of the *Grande Enquête* are in every case; the witnesses also depose on oath.

32. The Bailiff or chief magistrate, the Attorney General, the Viscount and the Solicitor General hold their offices by Royal patent: the jurats are elected for life by the rate-payers throughout the island: the constables and centeniers are elected by the rate-payers of their respective parishes, and hold office for three years. The police officers are elected by the parish meetings, composed of inhabitants of the parish paying a certain rate and of the parish officers for the time being; these police officers hold office for periods varying from three to seven years.

33. In the answers given above, the Commissioners will find a pretty full outline of our criminal procedure.

34. I am not prepared to suggest any plan of criminal law reform.

JOHN PELGUÉ,
*Jurat of the Royal Court, Jersey.*

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## No. 10.

Philip Le Gallais, Esq.
29 July, 1846.

*Answers of Philip Le Gallais, Jurat of the Royal Court of Jersey, to the first Series of Questions.*

1. Upwards of twenty-five years practice in the Royal Court as attorney and deputy viscount, and from January, 1843, as a jurat.

2. The Royal Court. Its jurisdiction is derived from a charter of King John, confirmed by successive sovereigns. It extends over all crimes and offences, excepting matters of high treason and laying violent hands on the ministers of justice while in the discharge of the duties of their office, which are reserved to the cognizance of the sovereign.

3. Prior to our separation from the Duchy of Normandy, we find no trace of a criminal law in this island. The old "*Coutumier de Normandie*," and Rouillé's commentaries thereon, furnish us with the original authority for our criminal law; to which may be added a few orders in council and ordinances of the states confirmed by royal authority. English authors are now frequently cited in the course of the pleadings.

4. When it is suspected that a party has committed an offence, the police collect all the information they can on the subject, proceed to the arrest of the suspected party, and, at the same time, or very soon after, inform the bailiff, or other magistrate authorised by him, of the circumstances and nature of the charge, who thereupon, if he considers them sufficient to authorise the detention of the party, issues an order or warrant, directed to the gaoler, in whose custody he is lodged by the police. A day previous to presenting the prisoner in Court, the constable leaves his written report, containing a detailed statement of the circumstances relative to the charge against the prisoner, with the Attorney General, who is, *ex officio*, the prosecutor. The next Court day, or soon after the arrest of the prisoner, it is the duty of the police to bring him up, when he is placed at the bar. The report, and the accusation or indictment, are read in open Court: and the bailiff, or chief magistrate, informs him of the nature of the charge, and that, if he have not already chosen an advocate to assist him in his defence, he had better do so now: he is then called upon to plead to the accusation or indictment, and may put in the plea he thinks fit, or he is advised; if it be that of Not guilty, a rule of Court is granted to the Attorney General to bring witnesses forward on a future day to support the charge; the accused party (unless the offence be bailable) is then fully committed and sent to prison.

5. The Court exercises summary jurisdiction when the accused party admits the charge, and in cases of breach of the peace, infringement of prohibitory laws, assault and battery, keeping disorderly houses, and other minor offences. In these cases, when the defendant denies the charge, *vivâ voce* evidence is heard on another day in his presence, but not taken down in writing, nor is the case tried by a jury.

6. Where there is no exercise of summary jurisdiction, no preliminary proceedings take place before the accused party be put on his trial, further than what is stated in the answer to the fourth question: the steps taken for securing his appearance before the Court are also stated in that answer.

7. Before the Royal Court, composed of the bailiff and two jurats: and, though the former is the functionary who gave the order for the committal or detention of the accused party, he cannot be said to have sent him to trial, as it commences only on his first appearance in Court.

8. By the Attorney General, who has the power, on his own responsibility, at any stage of the proceedings, to abandon the prosecution. This abandonment has the effect of a full acquittal.

9. The first time the accused party appears in Court, the charge is produced in a written

definite form: the Attorney General cannot afterwards alter or vary the form or substance of the accusation or indictment.

10. When the party admits the facts alleged against him, but denies their relevancy to support the charge, the Royal Court then decides whether they are relevant or not.

11. If the party charged simply denies the facts alleged against him, the Attorney General is allowed by a rule of Court to call witnesses on a future day.

12. The party charged is not concluded as to the facts, if he confines himself to a denial of the relevancy of the charges.

13. The party charged, by confining himself to a denial of the facts, is not thereby concluded as to their relevancy.

14. The party charged is entitled to the assistance of one or more advocates, and of one or more attorneys, when he has the means to defray their expense; and, when he is unable to do so, the advocate, whom he has the privilege of choosing, undertakes his defence gratuitously, as well as the attorney whose services he may require.

15. The Attorney General and the accused party can by law compel the attendance of any witnesses, and the production of such documents as may be considered useful, either to the defence of the accused, or to support the accusation at any stage of the proceedings, previous to the *enditement* or petty jury being empannelled.

16. Evidence is received as soon as the Court has made a rule to that effect, which is subsequently to the first appearance of the accused before the Court. The witnesses depose on oath, in presence of the Court, the Attorney General, the prisoner and his advocate. Their depositions are taken down, in writing, by some of the attorneys of the Court, who also, on this occasion, act gratuitously; which, being read to the witnesses, are by them respectively signed and lodged with the greffier or clerk of the Court.

17. The accused party is allowed during the whole of the proceedings to hear the evidence produced against him: no evidence can be taken in his absence.

18. The accused party is allowed to produce evidence at any time during the proceedings until the case is before a jury.

19. The accused party is allowed to question the witnesses, after the Attorney General has examined them, to such extent as may be useful to his defence.

20. The case being before the grand jury, no fresh evidence can be produced by the prosecutor. In some cases the Court does allow the prisoner to hear one or two more witnesses, if it be alleged to be material, for the purpose of establishing his innocence.

21. The whole.

22. It is read in open Court when the accused is on his trial before the jury. The depositions of the witnesses being taken down, in writing, in presence of the Attorney General and the accused party, either of them, not satisfied on some points of the evidence, may, previous to the calling of the jury, have the witnesses reexamined on those points, when any omission or error may be rectified: but neither party is afterwards allowed to give proof that the written evidence does not correctly represent the whole of what was deposed to.

23. The advocate of the accused party has the privilege of being heard on any question of fact or law which may arise in the course of the proceedings, and of examining and cross-examining the witnesses.

24. The Attorney General, as the prosecutor, is heard last.

25. The functionaries deciding the law are the bailiff and jurats constituting the Royal Court: and those deciding the fact are, in the first instance, the constable or centeniers, and police officers, to the number of 13, including the constable, who together form the *enditement* or petty jury; they act on such occasions by virtue of the oath taken by them on their admission to office, and therefore are not specially sworn to try the prisoner. If their finding be against the accused party, and he appeals therefrom, he is remanded to prison: and, a few days afterwards, the question of fact is again tried, and finally decided by the grand jury, composed of 24 men of good understanding and unimpeached character, selected by the Attorney General, eight from the prisoner's parish, and eight from each of two adjoining parishes.

26. The Royal Court.

27. It has that power for several causes, amongst which may be mentioned the following.

1. When, on the first appearance of the accused party in Court, the Attorney General may require time to consider and inquire further into the case prior to filing the accusation or indictment.

2. When the accused party's advocate requires a delay to consider the plea he may put in for the prisoner.

3. In order to take down the evidence in writing, and on some occasions to allow a reasonable time to bring forward any witness who may then happen to be out of the island, either for or against the prisoner.

4. In case of illness or absence of his advocate.

28. The bailiff, being informed that the evidence is closed, appoints an early day, on the application of the Attorney General, for the trial before the *enditement* or petty jury, which takes place in presence of a full Court, composed of the bailiff and seven jurats, at least. The prisoner is brought up and renews his declaration; or he may even, at this stage of the proceedings, vary or alter it. The names of the men of the jury being called, he is asked by the bailiff to state whether he has any challenge to make against any of the jury. This being disposed of, any question of law or objection previously taken, either by the Attorney General or defendant's advocate, in the first stages of the prosecution, and overruled before the inferior Court, may again be urged before the Court and fully discussed: if they have not the effect

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Philip Le Gallais, Esq.
29 July, 1846.

of quashing the prosecution, the jury is empannelled, the Attorney General reads publicly in open Court the whole of the proceedings, beginning with the written report of the police, then the accusation or indictment, the different acts or rules of Court, and, finally, the depositions. The advocate for the accused party is heard in his defence; the Attorney General supports the accusation or indictment, and then the bailiff (if he thinks proper) sums up the whole and addresses the jury on the case; after which, the *enditement* or petty jury retire in private, attended by the viscount or his deputy, with the whole of the written proceedings, that they may refer to, or reconsider, any part of the evidence submitted to them. On their return into Court, if agreed on their verdict, the foreman declares it to the Court; if not, each of the jurymen, individually and privately, states his opinion to the Court; and, should seven of them find the accused Not guilty, he is liberated, and there is an end of the accusation or indictment.

29. If the finding of the petty jury be against the prisoner, he has the privilege of an appeal to the grand jury, composed of 24 respectable men, as stated in my answer to the 25th question. A few days afterwards, the grand jury is summoned and sworn in presence of a full Court, and of the prisoner and his advocate, when similar proceedings and formalities are again observed as on the trial before the *enditement* or petty jury. The grand jury, attended by the viscount, retire, together with the whole of the written proceedings, to consider their verdict; and, unless 20 bring in a verdict of Guilty, the prisoner is acquitted and released from the accusation.

30. The viscount is directed to see the sentence of the Court carried into effect.

31. Having been informed by the greffier, or clerk of the Court (who has the custody of the books, in which are registered all criminal prosecutions), that he has furnished the Royal Commissioners with the forms used at the various steps of the proceedings, it is unnecessary for me to send them, as they would only be the counterpart of those already supplied by the greffier, who, I am further informed, has also transmitted copies of the oaths taken by the witnesses, the members of the Court, and of the grand jury.

32. The bailiff holds his appointment from Her Majesty during pleasure; the jurats are elected for life by the rate-payers of all the island; the constables and centeniers for three years by the rate-payers of their respective parishes; and the officers of police, called the constable's officers, and vingteniers, by their respective parish assemblies; the vingteniers for three years; the officers of constable of the county parishes for seven years; and those of the town and parish of St. Helier's for four years.

33. In the month of January, 1846, a *projet de loi,* or bill, regulating the mode of proceedings in criminal prosecutions, was referred to a Committee. This Committee has met and taken the subject into consideration, and, I trust, ere long, will have its report ready.

34. I cannot better point out the defects in our present system, nor the improvements which, with some modifications, might be adopted, than by referring the Royal Commissioners to the printed copy of the *projet de loi,* or bill, alluded to in my last answer. This very elaborate document (herewith enclosed) is from John William Dupré, Esq., Her Majesty's Solicitor General here, a gentleman of long practice, highly distinguished for his great knowledge of the laws and institutions of this island, and who has devoted much time and trouble to the consideration of this important subject.

PHILIP LE GALLAIS.

*Jersey, 29th July,* 1846.

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*Projet de Loi, or Bill for amending the Proceedings in Criminal Prosecutions, referred to in M. Le Gallais' Answer.*

AUX ETATS DE L'ILE DE JERSEY,

*L'An* 1836, *le 29e jour d'Août.*

Les Etats ont pris en considération les défauts et les vices de la procédure criminelle, suivie devant la Cour Royale de cette île.

Ils ont reconnu que souvent les prévenus sont trop légèrement mis en état d'accusation, attendu qu'ils sont saisis, présentés devant la Cour, et que leur procès leur est fait, sur des dénonciations non appuyées du serment des délateurs, et que notre pratique n'admet point un examen préalable des charges mises à leur compte.

Ils ont aussi reconnu que l'ancienne règle, qui n'admettait l'instruction des procès criminels que durant les deux termes de la Cour Royale, offrait de grands inconvéniens, attendu qu'un accusé pouvait subir une détention de cinq à six mois, avant d'être jugé, et que l'accumulation des poursuites entravait la marche des affaires civiles; que la nouvelle loi qui permet de poursuivre les accusés en vacance comme en terme, quoiqu'elle ait remédié en grande partie à ces inconvéniens, laisse cependant trop à la volonté du Chef Magistrat et de la Partie Publique, et d'ailleurs elle assujétit les membres de la Cour Royale à une attendance continuelle, de sorte qu'il serait avantageux de fixer des époques rapprochées auxquelles ces sortes d'affaires seraient traitées, et en même tems d'abréger la procédure qui est inutilement prolongée par le système actuel.

Les Etats ont aussi reconnu qu'il existe un grave défaut dans la composition des Juris en matière criminelle. Qu'il est contraire à toute saine maxime de Jurisprudence, que les Officiers de Police, qui sont en charge pour quatre et sept ans, et qui peuvent être réélus, soient toujours appelés à former l'enditement, qu'ils aient à prononcer, en qualité de premier Juri, sur l'accusation; eux qui souvent, dans l'exercice de leurs fonctions, ont concouru à la découverte du crime, à la saisie et à la mise en accusation du prévenu; que l'accusé soit forcé de les accepter pour ses Juges, quelque opinion d'ailleurs qu'il ait de leur prévention contre lui, à moins qu'il ne puisse former contr'eux des récusations spéciales. Les Etats sont aussi convaincus que la pratique pourrait être dangereuse qui laisse à la Partie Publique, dont le dévoir est de sévir contre l'accusé, le droit de choisir les membres de la Grande Enquête qui doivent finalement prononcer sur son sort.

Les Etats ont de plus reconnu que la procédure actuelle est très vicieuse, en ce que les témoins ou informateurs sont entendus devant le Chef Magistrat et deux Jurés Justiciers, en absence du Juri; que les Jurés ne peuvent former leur opinion que sur la lecture qui leur est faite de ces dépositions, qui ont été rédigées par écrit. Que par cette manière de procéder, les procès criminels traînent en longueur, la Cour étant occupée plusieurs jours à préparer chaque procès, et que les Jurés ont le désavantage de ne pouvoir juger de la véracité des témoins et du degré de confiance qu'ils méritent, à la manière dont ils font leurs déclarations, qui d'ailleurs sont souvent imparfaitement rendues par les rédacteurs.

Que, d'ailleurs, la nécessité où se trouve la Cour d'interroger plusieurs témoins à la fois, afin de pouvoir expédier les affaires dont elle est saisie, nuit également à la due instruction du procès et aux intérêts de la défense.

Que le concours de deux Juris, dont les fonctions sont précisément les mêmes, pour juger un procès criminel, n'est pas nécessaire, et même peut nuire à l'administration de la justice; que d'ailleurs la Grande Enquête offre par sa composition, et la manière dont elle rend son verdict, une ample garantie à la société et à l'accusé; ainsi que l'ont demontré une longue expérience et l'assentiment général.

Par ces motifs, les Etats ont résolu d'opérer les changements et améliorations suivants dans la procédure criminelle:

1°. D'assurer la liberté personnelle des citoyens, en prescrivant que nul ne sera mis en état d'accusation que sur le serment d'une ou de plusieurs personnes dignes de foi.

2°. D'établir des Assises, convoquées à des époques fixes, pour juger les procès criminels.

3°. D'abroger la procédure devant l'Enditement, mais de conserver la Grande Enquête, qui era composée de citoyens offrant une garantie suffisante, et qui seront désignés par le sort pour assister aux assises.

4°. De supprimer la rédaction des dépositions devant la Cour, en absence du Juri, et de faire entendre les témoins de vive voix, devant la Cour et le Juri.

5°. D'assurer par des dispositions spéciales la comparution des Jurés et des témoins.

Et à cet effet, les Etats ont adopté la Loi suivante.

### *Loi sur la procédure Criminelle.*

#### DISPOSITIONS GÉNÉRALES.

I. Toute personne accusée de crime, ou de délit, assujétissant la personne qui en serait trouvée coupable à un emprisonnement de trois mois sera jugée par la Cour Royale, avec l'assistance de Jurés, composant une Grande Enquête, de la manière et dans les formes ci-après prescrites.

II. Il y aura annuellement six Assises criminelles ordinaires:

La première Assise commencera le 3e Janvier; la seconde le 1er Mars; la troisième le 1er Mai; la quatrième le 7e Juillet; la cinquième le 1er Septembre; la sixième le 1er Novembre.

Chaque Assise durera quatre jours, exclusivement du Dimanche et des jours fériés qui pourraient intervenir.

III. Si le jour indiqué pour l'ouverture de l'Assise est un Dimanche ou un jour férié, elle commencera le premier jour ouvrier suivant.

IV. Si les procès criminels à juger ne peuvent être terminés durant l'Assise ordinaire, la Cour pourra ordonner la convocation d'une ou de plusieurs Assises extraordinaires. Elle fixera la durée de l'Assise extraordinaire, qui n'excédera pas quatre jours.

V. Si les procès criminels à juger sont terminés avant le temps fixé pour la clôture de l'Assise, la Cour congédiera les Jurés dès que leurs services ne seront plus requis.

VI. La Cour en Corps présidera aux Assises; mais si, par l'absence, la maladie ou l'empêchement de plusieurs Jurés Justiciers, le nombre de sept ne peut être réuni, trois Jurés Justiciers, avec le Chef Magistrat, seront compétens pour tenir l'Assise.

#### *Composition du personnel des Juris.*

VII. Tout sujet Britannique, domicilié dans cette île, qui est âgé de vingt-un ans accomplis, et qui n'a pas atteint sa soixante-cinquième année, et qui est porté sur la liste du rât paroissial pour une somme de quartiers et au de-là, est tenu de servir en qualité de Juré dans les Grandes Enquêtes; sauf les exceptions ci-après énoncées.

VIII. Sont exemptés du service de Jurés:

1°. Les Membres du Corps de la Cour et les Connétables.

2°. Le Clergé de l'Eglise Anglicane et de l'Eglise Romaine; les Pasteurs des Eglises reformées non conformistes, qui justifient qu'ils sont à la tête d'une congrégation et qu'ils ne suivent aucune occupation séculière.

3°. Les Avocats de la Cour Royale, les Médecins et Chirurgiens, exerçant leur état.

4°. Les Maîtres de Port et les Pilotes brévetés, en activité de service.

5°. Les Prévôts du Roi.

6°. Les Administrateurs et Chefs des Hôpitaux publics; les Geoliers et Directeurs des Prisons et maisons de détention.

7°. Toute personne qui a atteint sa soixante-cinquième année.

8°. Toute personne atteinte d'une infirmité permanente, qui la rend incapable de servir.

IX. Sont incapables de servir comme Jurés:

1°. Tout individu qui n'est point né ou naturalisé sujet Britannique.

2°. Tout individu qui n'a pas atteint sa vingt-unième année.

3°. Tout interdit, pour quelque cause que ce soit; toute personne frappée d'aliénation mentale.

4°. Toute personne atteinte et convaincue de trahison ou de félonie, ou qui est condamnée à subir, ou qui a subi, une peine flétrissante; toute personne hors la Loi ou contumace.

5°. Toute personne sous accusation de crime ou de délit, qui l'assujétirait à être jugée par le Juri.

X. Pourront être exemptées du service de Juré, pour le tems que dure la cause d'exemption:

1°. Toute personne atteinte d'une infirmité temporaire qui la rend incapable de service.

2°. Toute personne qui ne comprend point la langue dans laquelle s'instruit la procédure.

XI. Chaque année, dans la première quinzaine du mois de Novembre, les Connétables ou Chefs de Police présenteront à l'Assemblée des Principaux et Officiers de leurs paroisses respectives un état par ordre alphabétique des habitants de la paroisse qui sont cotés au rât, pour une somme de quartiers et au delà.

JERSEY.

*Answers to Questions.*

SERIES I.

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XII. L'assemblée vérifiera sur la liste du rât l'exactitude de cet état. Elle en retranchera les noms de ceux qui ont le droit aux exemptions énoncées dans l'article 8; les noms de ceux qui réclameront une exemption en vertu de l'article 10; et les noms de ceux qui sont frappés des incapacités énoncées dans l'article 9.

L'état ainsi arrêté sera signé par le Connétable ou Chef de Police; il sera transcrit sur le livre des actes de l'assemblée, où il sera fait mention des exceptions admises et des motifs qui y ont donné lieu.

Un état nominatif sera dressé séparément:

1°. Des exemptions énoncées dans l'article 8.

2°. De celles réclamées en vertu de l'article 10.

3°. Des individus frappés d'incapacité en vertu de l'article 9.

Cet état, ainsi arrêté, signé par le Connétable ou Chef de Police, sera affiché le premier Dimanche après la tenue de l'assemblée à la principale barrière du Cimetière de l'Eglise paroissiale.

XIII. Chaque Connétable ou Chef de Police déposera au Greffe de la Cour Royale, dans le délai de quinze jours, l'état arrêté par l'assemblée de sa paroisse, avec un état des noms qui auront été retranchés de la liste; le Greffier transcrira ces états sur un Registre, et écrira un numéro vis-à-vis chaque nom des Jurés.

XIV. La Cour revisera les Etats d'exemptions, lorsqu'elle s'assemblera pour procéder au tirage des Jurés pour l'Assise de Janvier; et prononcera sur toute réclamation qui pourrait lui être adressée à ce sujet. Les Connétables ou Chefs de Police assisteront à l'audience, afin de donner les explications nécessaires.

Les personnes portées sur ces Etats, ainsi définitivement arrêtés, composeront les Jurés pour l'année suivante.

PROCÉDURE.

*De la Prévention.*

XV. Toute personne saisie sous prévention de crime ou de délit sera présentée devant la Cour, à la première audience, après un délai de quarante huit heures.

XVI. L'Officier qui saisira l'inculpé pourra le remettre provisoirement à la garde du Geolier de la Prison Publique, en obtenant, au préalable, une autorisation d'un Magistrat, laquelle autorisation sera déposée aux mains du Geolier, qui en donnera récépissé.

XVII. L'Officier auquel il appartient de présenter l'inculpé sera tenu de remettre à la Partie Publique, au moins vingt-quatre heures avant l'audience, un rapport énonçant les faits et circonstances qui ont donné lieu à la prévention, et qui ont accompagné et suivi la saisie, et tout autre renseignement qui peut servir à former l'acte d'accusation. Il remettra aussi à la Partie Publique les noms des témoins et informateurs.

XVIII. L'Officier auquel il appartient de présenter l'inculpé citera, ou fera citer, à comparaître à l'audience, par ses Officiers ou par le Prévôt de la paroisse où réside le témoin, les témoins ou informateurs qui doivent être entendus pour établir la prévention.

XIX. Lorsque l'inculpé sera présenté, la Partie Publique donnera lecture du rapport, et produira l'acte d'accusation. L'inculpé sera interrogé par le Président sur ses noms et prénoms, son âge, son état; les personnes citées en témoignage déposeront par serment; et la Cour décidera s'il y a preuves, charges ou indices assez graves pour prononcer la mise en accusation de l'inculpé et l'envoi de la cause aux Assises.

Si la Cour décide l'affirmative, l'accusé plaidera sur l'accusation.

Si l'accusé se déclare non coupable, il sera constitué prisonnier ou admis à caution, s'il y a lieu; et la procédure sera continuée.

S'il refuse de plaider, la procédure sera continuée comme s'il s'était déclaré non coupable; mais il ne sera pas admis à caution, quand même il y aurait lieu.

S'il s'avoue coupable, la Cour prononcera sentence.

Si la Cour estime que les preuves, charges ou indices résultant des dépositions des témoins ne sont pas assez graves pour prononcer la mise en accusation de l'inculpé, il sera relâché, ou, s'il y a lieu, la cause sera retenue pour être jugée par la Cour en simple police.

XX. L'inculpé pourra se faire assister par un Avocat. Dans cet état de cause les fonctions du défenseur se borneront à énoncer et discuter toute question préjudicielle que pourrait faire naître l'accusation, à interroger les témoins et à énoncer le plaid de l'accusé aprés l'arrêt de mise en accusation.

XXI. La Partie Publique pourra requérir un délai, soit pour prendre de plus amples informations, avant de présenter l'acte d'accusation, soit à cause de l'absence d'un ou de plusieurs témoins; la Cour fixera la durée du délai, selon les circonstances qui l'auront motivé.

XXII. Si un délai est ordonné, l'inculpé sera mis en état de détention préventive, ou admis à caution, s'il y a lieu. La Cour annoncera à l'inculpé le jour de l'audition de l'affaire; et elle commandera aux témoins ou informateurs présents de comparaître le dit jour.

XXIII. Dans les procés criminels intentés sur la représentation de la Partie Publique, lorsque la saisie de l'inculpé sera ordonnée par la Cour, les témoins seront entendus pour établir la prévention lorsque l'inculpé sera présenté, la représentation tenant lieu d'acte d'accusation.

XXIV. Si le délit imputé à l'accusé, soit par le rapport de l'Officier compétent, soit sur la représentation de la Partie Publique, ne donne lieu qu'à une signification de comparaître ou à une action ordinaire, il n'y aura pas de témoins entendus pour établir la prévention, mais l'inculpé sera tenu de plaider sur l'acte d'accusation, ou sur la représentation ou billet, la premiére fois qu'il comparaîtra.

XXV. Sur le défaut d'un inculpé, cité pour un délit en vertu d'un Acte de la Cour, ou d'une action, la saisie de sa personne sera ordonnée. L'ordonnance fixera le cautionnement qui sera exigé par l'Officier pour assurer la comparution de l'accusé.

Si l'inculpé qui aura fourni caution ne comparaît pas le jour qui lui aura été assigné par l'Officier, le cautionnement sera adjugé au Roi, et prise de corps sera décernée vers l'inculpé.

XXVI. Si l'inculpé pour crime ou délit, donnant lieu à la saisie da personne, est en fuite, ou s'il se soustrait aux recherches de la Justice, prise de corps sera décernée vers lui.

XXVII. Aprés prise de corps décernée, nul cautionnement ne sera reçu, mais l'inculpé sera mis en état de détention préventive.

XXVIII. Tout témoin cité pour établir la prévention de l'inculpé, ou auquel il aura été commandé de comparaître en vertu de l'article 22e, et qui ne se présentera pas pour déposer, sera passible d'une amende de cinq chelins sterlings.

Les personnes citées en témoignage, qui, par leur absence, donneront lieu à un délai ou à une remise de l'affaire, seront en outre condamnées aux frais curiaux, à payer à chaque témoin ou informateur présent une indemnité de deux chelins; et leur saisie sera ordonnée et exécutée par le Vicomte ou l'un des Dénonciateurs, Sergens de Justice, qui les présentera devant la Cour le jour indiqué pour l'audition de la cause : sauf, dans l'un et l'autre cas, une excuse légitime.

XXIX. Quand le verdict d'une Enquête de levée de corps aura établi la prévention, l'inculpé sera présenté seulement pour répondre à l'acte d'accusation, le verdict de l'enquête remplaçant l'arrêt de mise en accusation. Les témoins seront entendus par serment devant l'Enquête de levée de corps; le Vicomte, ou le Dénonciateur agissant, leur administrera le serment.

XXX. L'accusé pourra se faire délivrer par le Greffier, gratuitement, copie de l'acte d'accusation et des autres pièces du procès, qui auront été déposées au Greffe.

*Formation du Juri.*

XXXI. Dans les trois premiers jours de la semaine qui précède celle où l'ouverture d'une Assise ordinaire doit avoir lieu, la Cour s'assemblera pour procéder au tirage des Jurés qui composeront les Grandes Enquêtes.

XXXII. Le tirage des Jurés de l'Assise aura lieu dans la forme qui suit :

Des numéros, en nombre égal et correspondant à ceux des Jurés dans le Registre du Greffier, seront inscrits sur des bulletins séparés et mis dans une urne, en présence de la Cour : le Vicomte en retirera 50 bulletins; et les numéros sortant, avec le nom des Jurés qu'ils désignent, seront inscrits sur une liste, à mesure qu'ils sortent de l'urne.

Les trente-huit premiers individus désignés seront tenus de servir comme Jurés de l'Assise.

Les douze derniers pourront être appelés comme Jurés supplémentaires, si par quelque cause le nombre des Jurés de l'Assise se trouvait incomplet.

XXXIII. Les Jurés qui auront assisté à une Assise seront dispensés de servir dans les autres Assises de l'année.

XXXIV. Le tirage des Jurés pour les Assises extraordinaires aura lieu dans les formes indiquées pour les Assises ordinaires.

La Cour fixera le jour du tirage, lorsqu'elle ordonnera la convocation de l'Assise; le jour indiqué doit être un des trois premiers jours qui précédent celui de l'ouverture de l'Assise extraordinaire.

XXXV. Quand la liste des Jurés de l'Assise sera arrêtée, elle sera signée par le Président de la Cour et remise au Vicomte, qui citera les Jurés de l'Assise ordinaire à comparaître au jour et à l'heure indiqués pour l'ouverture de l'Assise, et les trois jours d'Audience suivants.

XXXVI. Les citations seront par écrit, ou imprimées; elles seront signées par le Vicomte, et servies à domicile, vingt-quatre heures au moins avant le jour pour lequel la première comparution des Jurés est requise. Elles feront mention de la peine à laquelle les Jurés sont sujets s'ils ne comparaissent point.

XXXVII. La Grande Enquête sera composée de vingt-quatre Jurés; les Jurés seront appelés à la former dans l'ordre où ils sont inscrits sur la liste signée par le Président de la Cour. Les Jurés récusés, et dont les récusations seront admises, seront remplacés dans le même ordre.

Quand il sera formé un nouveau Juri on commencera par les Jurés qui n'auront pas servi dans l'Enquête précédente, et ensuite on recommencera la liste.

XXXVIII. L'accusé pourra récuser péremptoirement douze Jurés appelés, sans être tenu d'assigner les motifs de la récusation. S'il y a plusieurs accusés et qu'ils ne puissent s'accorder sur les récusations à porter, chacun d'eux aura le droit de récuser péremptoirement quatre Jurés.

XXXIX. Tant l'accusé que la Partie Publique pourront porter des récusations spéciales, qu'il y ait eu récusation péremptoire, ou non.

XL. Si la liste des Jurés est épuisée, et qu'il ne reste pas un nombre suffisant de Jurés non récusables pour former la Grande Enquête, la cause sera remise, et des Jurés supplémentaires seront cités pour la compléter.

XLI. Les récusations spéciales ne seront admises que contre celui ou ceux qui auront souffert par le crime ou délit imputé à l'accusé, contre les parens et alliès de l'accusé, ou de celui ou de ceux qui ont souffert par le crime ou délit imputé à l'accusé, jusque et y compris le dégré de cousin germain, ou à cause d'inimitié envers l'accusé, d'un procés au civil dépendant entre le Juré récusé et l'accusé, ou d'un procés criminel dépendant, ou qui aurait été jugé, où l'accusé et le Juré récusé auraient figuré l'un comme délateur ou partie plaignante, et l'autre comme accusé.

XLII. Le père et le fils, le beau-père et le gendre, deux frères, deux beaux-frères, ne pourront former partie du même Juri.

XLIII. Le serment suivant sera administré aux Jurés : " Vous jurez que vous remplirez con-
" sciencieusement et scrupuleusement les devoirs de Juré, sur l'accusation portée par le Procureur
" Général du Roi (ou l'Officier exerçant les fonctions de Partie Publique) contre ....., et que
" vous donnerez votre verdict en conformité aux preuves, sans prévention et sans haine, et que vous
" ne divulguerez point l'opinion de vos collègues, ni la votre, comme vous en répondrez devant Dieu,
" à l'acquit de votre conscience."

Chaque Juré répondra individuellement " Je le jure."

XLIV. Les Jurés, après qu'ils auront prêté serment, choisiront pour leur chef un des membres de la Grande Enquête.

*Procédure devant la Grande Enquête.*

XLV. Après l'installation de la Grande Enquête l'acte d'accusation sera lu, et l'accusé sera sommé par le Président de la Cour d'énoncer derechef son plaid; lecture des actes et piéces de la procédure sera faite; les témoins déposeront par serment et de vive voix; la Partie Publique exposera la cause; le défenseur de l'accusé présentera la défense; la Partie Publique pourra répliquer, mais de manière que le défenseur ait dans tous les cas le droit de parler le dernier; le Président de la Cour résumera l'affaire; il fera remarquer aux jurés les principales preuves pour ou contre l'accusé.

Si le crime imputé à l'accusé emporte la peine capitale, la Cour fera prendre note des dépositions.

XLVI. Le verdict de la Grande Enquête sera annoncé publiquement et à haute voix par le Président, et déclarera l'accusé innocent ou coupable de l'entier de l'accusation, ou innocent ou coupable de partie de l'accusation.

Dans ce dernier cas le verdict énoncera les chefs de l'accusation dont l'accusé est déclaré innocent ou coupable.

JERSEY.

*Answers to Questions.*

SERIES I.

Philip Le Gallais, Esq.
29 July, 1846.

Le verdict pourra modifier l'accusation, en rapportant l'accusé coupable d'un dégré moins grave du crime qui lui est imputé.

XLVII. Il faut le concours de vingt Jurés pour déclarer l'accusé coupable.

XLVIII. Si le verdict de la Grande Enquête déclare l'accusé coupable de l'entier ou de partie de l'accusation, il sera déclaré dûment atteint et convaincu du crime, du délit, ou de la contravention mis à sa charge ; et la Cour appliquera la peine qu'il a encourue.

Si le verdict déclare l'accusé innocent, il sera déchargé de la poursuite et relâché.

XLIX. Les Jurés pourront se retirer dans la chambre de leurs délibérations pour considérer leur verdict. Ils y seront conduits par le Vicomte, qui, après leur avoir remis les pièces de la procédure, sortira de la dite Chambre, et empêchera qu'ils ne communiquent avec qui que ce soit.

L. S'il s'élève du doute relativement au verdict ou à la portée du verdict prononcé par le chef de la Grande Enquête, la Cour pourra renvoyer les Jurés dans la Chambre des délibérations pour le rectifier, avec les formalités prescrites par l'article précédent.

Il en sera de même si le verdict ne se rapporte point aux chefs de l'accusation.

LI. Si la majorité des Jurés reconnaît qu'il y a dans les faits de la cause des circonstances atténuantes en faveur de l'accusé, il en sera fait mention dans le verdict.

Dans ce cas la Cour prononcera une peine contre l'accusé, inférieure à celle qu'il eût encourue s'il eût été déclaré coupable sans circonstances atténuantes.

LII. Dans tous les cas ou la peine capitale sera prononcée la sentence ne sera mise à exécution qu'après avoir reçu la Sanction Royale ; et à cet effet le Chef-Magistrat transmettra toutes les pièces de la procédure à sa Très Excellente Majesté en Conseil.

LIII. Sur les questions de droit qui seront soumises à la Cour, soit par la Partie Publique, soit par l'accusé, la partie qui proposera la question exposera ses moyens, et l'autre partie aura la réplique.

LIV. La Cour sera tenue de faire acte de toutes ses décisions et de les motiver ; et elle enregistrera le verdict de la Grande Enquête.

LV. Les Jurés ne communiqueront avec qui que ce soit, autres que leurs collègues et la Cour, du moment qu'ils auront prêté serment, jusqu'à ce qu'ils aient rendu le verdict, sur peine de dix livres sterling d'amende vers le contrevenant, et de nullité de la procédure, s'il y a eu communication avec une personne étrangère au Juri, relativement au procès.

LVI. Si durant les débats un Juré est atteint d'une maladie ou d'une indisposition qui l'empêche de continuer ses fonctions, il pourra être remplacé sur le champ par un autre Juré de l'Assise, si la Partie Publique et l'accusé y consentent.

Autrement, le procès aura lieu devant une autre Grande Enquête, s'il se peut durant la même assise, ou sera renvoyé à une assise extraordinaire.

LVII. Tout Juré dûment cité à comparaître à une Assise, et qui ne se présentera point quand son nom aura été appelé trois fois à haute voix, ou qui se retirera après avoir comparu, sans l'autorisation du Président de la Cour, sera condamné à une amende de dix livres sterlings.

Le Juré, ou les Jurés, qui, par leur absence, donneraient lieu à la remise de l'affaire, seront en outre condamnés à payer les frais curiaux, une indemnité de cinq chelins à chaque Juré présent, et de deux chelins à chaque témoin, sauf, dans l'un et l'autre cas, une excuse légitime.

LVIII. La citation des témoins, dans un procès jugé avec l'assistance de Jurés, sera servie, à domicile, par le ministère du Vicomte ou de l'un des Dénonciateurs, Sergens de Justice, au moins vingt-quatre heures avant celle de l'audience, et à la diligence de la Partie Publique.

LIX. La citation sera par écrit, ou imprimée, et signée par l'Officier ; elle énoncera le nom du témoin, le titre de l'officier qui remplit les fonctions de Partie Publique, celui de l'accusé, ou des accusés, le jour, l'heure et le lieu où la présence du témoin est requise, et la peine à laquelle il est sujet s'il ne se présente pas.

LX. Toute personne dûment citée à témoignage devant la Grande Enquête, qui ne comparaîtra pas à l'audience indiquée dans la citation, quand son nom sera appelé trois fois à haute voix, ou qui, après avoir comparu, se retirera sans déposer ou sans l'autorisation du Président de la Cour, sera condamnée à une amende de cinq livres sterling.

Si l'absence de la personne citée donne lieu à la remise de la cause, elle sera en outre condamnée aux frais curiaux, à payer une indemnité de cinq chelins à chaque Juré, et de deux chelins à chaque témoin présent ; et la Cour ordonnera sa saisie par l'Officier, qui la présentera le jour indiqué pour l'audience ; sauf, dans l'un et l'autre cas, une excuse légitime.

LXI. Tout témoin saisi en vertu d'un acte de la Cour, fait en exécution de cette loi, pour avoir fait défaut devant la Grande Enquête, sera tenu de donner caution à l'Officier de comparaître devant la Cour, pour donner sa déposition, toutes fois et quantes qu'elle en sera requise, sur la pénalité de cinquante livres sterling.

S'il ne fournit le cautionnement requis, il sera détenu jusqu'à ce qu'il ait déposé.

LXII. Les seules causes admissibles pour justifier l'absence d'un Juré, dûment cité en vertu de cette loi, sont :

1°. Le cas de maladie qui l'empêche de quitter son domicile sans danger.

2°. De décès d'un parent ou allié, jusqu' et y compris les dégrés d'oncle et de neveu, de tante et de nièce, pourvu que l'inhumation n'ait pas eu lieu huit jours avant celui où la comparution est requise.

LXIII. Les seules causes admissibles pour justifier l'absence d'un témoin ou informateur, dûment cité en vertu de cette Loi, sont :

1°. Le cas de maladie qui l'empêche de quitter son domicile sans danger.

2°. Le décès d'un parent ou allié, jusqu' et y compris les dégrès d'oncle et de neveu, de tante et de nièce, pourvu que l'inhumation n'ait pas eu lieu avant le jour, ou le jour même, que la comparution est requise.

LXIV. Tout Juré, témoin ou informateur, empêché par maladie de se presenter le jour où sa comparution est requise, sera tenu de faire remettre à la Partie Publique, avant l'audience, le certificat d'un médecin ou d'un chirurgien, constatant son état, et de se faire exoiner devant la Cour.

Le Juré, témoin ou informateur, empêché à cause de la mort d'un parent ou allié, sera tenu d'en donner avis avant l'audience, a Partie Publique, et de se faire exoiner devant la Cour.

Néanmoins, si la cause d'absence naît le jour qui précède celui où la comparution est requise, ou le jour même, et que le Juré, témoin ou informateur empêché n'a pu remplir les formalités prescrites par cet article, il pourra se faire re ever, sans frais, des condamnations prononcées contre lui, en justifiant son éta d'incapacité à la satisfaction de la Cour.

LXV. La Partie Publique, ou l'accusé, pourra faire entendre devant le Vicomte les témoins ou informateurs qui sont sur leur départ de cette île, ou qu'une maladie ou une infirmité empêche de se rendre à la Cour.

Il en sera de même si, entre l'époque de l'accusation et celle de l'Assise, il y a lieu de craindre le décès ou le départ d'une personne dont le témoignage est nécessaire.

La Cour, dans tous les cas, accordera la demande qui lui sera faite pour cet effet ; l'Acte autorisant le Vicomte à recevoir la déposition énoncera le motif pour lequel la demande est faite.

Si le témoin ou informateur, entendu devant le Vicomte, peut déposer devant la Cour, lorsque le procès sera jugé, sa déposition écrite ne sera pas produite, mais il sera tenu de déposer de vive voix.

LXVI. La citation d'un témoin ou informateur à comparaître devant le Vicomte sera faite dans les formes prescrites par les articles 58 et 59. L'absence de la personne citée l'assujétira aux peines énoncées dans les articles 60 et 61.

L'absent pourra se prévaloir des excuses énoncées dans l'article 62, en remplissant les formalités prescrites par l'article 64.

Le Vicomte prononcera les peines dans un record écrit au pied de l'Acte de la Cour ; mais, pour être exécutoire, le record devra être confirmé par la Cour, sauf la peine de la saisie et l'obligation de fournir caution, qui sera provisoirement exécutée sur le simple record du Vicomte.

LXVII. L'accusé sera présent à toute déposition prise devant le Vicomte : il lui sera donné un avertissement, ainsi qu'à son défenseur, de vingt-quatre heures pour le moins.

LXVIII. L'absence d'un ou de plusieurs témoins essentiels, soit à l'accusation, soit à la défense, donnera lieu au renvoi du procès aux prochaines Assises.

LXIX. L'accusé, s'il est sous la main de la justice, sera présent à toutes les audiences et à tous les jugements qui le concernent, et le verdict de la Grande Enquête sera rendu en sa présence.

LXX. La contrefaçon ou la falsification d'un certificat requis, en vertu des dispositions de cette Loi, assujétira les délinquants, et ceux qui s'en seront servis sciemment, à être poursuivis et punis comme faussaires.

LXXI. Toute personne qui délivrera un certificat requis par cette Loi, et qui y constatera un fait ou des faits qui seront faux, ou qui sciemment fera usage d'un pareil certificat, subira une amende qui ne sera pas moins de dix livres sterling, et n'excédera pas cent livres sterling : les insolvables seront punis par un emprisonnement qui ne sera pas moins de trois mois et n'excédera pas un an.

*Des Nullités.*

LXXII. Toute violation des dispositions de cette Loi, relativement à la formation de la Grande Enquête, ou aux formes qui doivent être observées devant elle, donnera lieu à la nullité de la procédure.

LXXIII. En tout état de cause l'accusé pourra prendre des conclusions pour des motifs qui donneraient lieu à la nullité de la procédure.

LXXIV. Quand la nullité de la procédure sera prononcée, les débats seront repris devant un autre Grande Enquête.

Ce qui sera imprimé et publié.

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## No. 11.

*Answers of Francis Arthur, Esq., one of the Jurats of the Royal Court, to the first Series of Questions.*

Francis Arthur, Esq.

1. I was elected jurat in 1845, after having filled several public offices.

2. The Royal Court, whose jurisdiction has originated in the charter of King John, and has been confirmed by successive sovereigns : it extends over all crimes and offences, with the exception of high treason and laying violent hands on the Queen's officers, reserved to Her Majesty in Council.

3. Our criminal law is based on the ancient law of Normandy : but precedents are chiefly relied upon.

4. The constable or centenier of the parish where the offence has been committed collects all the information he can obtain : and, if the offence is such as to justify the arrest of the person, he arrests the party suspected, when there are sufficient grounds to believe him guilty. Such officer then lays the matter before the chief magistrate, who may grant or refuse a committal. In other cases the constable or centenier, through the Attorney General, presents a report to the Court, stating the offence that has been committed, and the information he has received. The Court may then order the party to be arrested, or merely summoned to appear.

5. The Court alone has a summary jurisdiction, which it exercises in cases of breach of the peace, assault and battery, infringement of prohibitory laws, keeping disorderly houses, and other minor offences.

6. The party arrested is brought before the Court : the report of the police, stating the most important facts of the case, and which has been left previously with the Attorney General for his consideration, is read ; and the Attorney General, as public prosecutor, reads the *accusation* or indictment which he has prepared. The accused party, with the advice of counsel, puts in his plea ; if he does not plead Guilty, the Court allows the Attorney General and the prisoner to summon witnesses for some future day, and the accused party is either admitted to bail or remanded to prison, according to the nature of the offence.

7. The evidence is taken down in writing before the Court, composed of the bailiff and two jurats. When the evidence is complete, both for the prosecution and the defence, the full Court, composed of the bailiff and seven jurats at least, meets ; the jury, composed in the first instance of 13 members of the parish where the offence has been committed, is empannelled ; the accusation or indictment, together with the evidence, is read, the counsel of the prisoner heard in his defence, and afterwards the Attorney General. The jury, by a majority of votes, finds

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the accused party Guilty or Not guilty. In the first case he may appeal to another jury, composed of 24 gentlemen, chosen by the Attorney General. When this jury is empannelled before the full Court, the evidence is again read over, and the party heard in his defence, as also the Attorney General in support of the accusation. Five members of the jury are sufficient to acquit. If the prisoner is found guilty, the full Court then passes sentence.

8. By the Attorney General, who may abandon proceedings, with the sanction of the Court, unless it be for minor offences. We are not aware of fresh proceedings having been afterwards taken against the same party.

9. When the party is first brought before the Court, the accusation which has been prepared by the Attorney General is read. He is not allowed afterwards to vary or alter its form or substance.

10. The point is argued before the Court between the Attorney General and the counsel for the accused party.

11. The Attorney General is allowed to call witnesses in support of the charge.

12. No.

13. He is not thereby concluded as to their relevancy.

14. The party charged is entitled to the assistance of counsel. One counsel only can be heard for the defence: he is selected by the party accused, and pleads gratuitously if such party is without means.

15. Both parties are entitled by law to compel the attendance of witnesses and the production of documentary evidence at any time before the jury be empannelled. In some cases the Court has allowed the defence to produce further evidence after the verdict of the first jury.

16. On an early day, fixed by the chief magistrate, it is taken down in writing before the Court by some of the attorneys, in the presence of the Attorney General and of the prisoner and counsel.

17. No evidence can be heard in his absence.

18. At any stage of the proceedings.

19. After the Attorney General has examined them, the party accused may cross-question the witnesses to such an extent as may be useful to his defence.

20. The Attorney General is not allowed to hear witnesses after the case has been before the first jury; but in some cases, and under special circumstances, it has been allowed to the party accused.

21. The whole is taken down in writing.

22. The witnesses do not appear before the jury; but the evidence is read. The evidence being taken down in the presence of the Attorney General and the accused party, and kept in the custody of the clerk of the Court, its correctness cannot be impugned.

23. He can be heard on questions of fact or law, and may examine the witnesses.

24. The Attorney General has the privilege of being heard last.

25. The Court decides questions of law, and the juries decide the fact.

26. By the Court, after having heard the Attorney General as to the punishment to be awarded, and the accused party or his counsel in mitigation.

27. The Court has power to adjourn or suspend proceedings, to allow fresh evidence to be heard either for the prosecution or for the defence, until the first jury is empannelled.

28. The general incidents have been detailed in the foregoing answers. The jurors of the first and also of the second jury may be challenged for cause.

29. The Attorney General cannot appeal, if the accused party is acquitted by the first jury; but the prisoner may appeal to the second jury, or *grande enquête.*

30. The Viscount is the officer charged to carry the sentence of the Court into execution. In cases of capital punishment sufficient time is allowed the criminal to sue for mercy.

31. The clerk of the Court may furnish the Commission with the forms of proceedings. The oaths taken by witnesses, juries and members of the Court are contained in the Code of Laws printed in 1771.

32. The Bailiff, the Attorney General, the Viscount and the Solicitor General hold their offices by letters patent from the Crown. The jurats are elected for life by the rate-payers of the island. The constables and centeniers are elected for three years by the electors of the several parishes; and the police officers are chosen by the parish assemblies. The constables, centeniers and police officers are removable by the Court; the other functionaries by Her Majesty in Council.

33 and 34. The punishments to be awarded are in most cases left to the discretion of the Court, who is ruled by precedents and a few penal enactments. The punishments do not exceed in severity those awarded by the English laws; and generally criminals are treated with much more leniency: but more precise enactments would be required. It is generally admitted that the police ought not to be on the first jury. The second jury, or *grande enquête,* is, on the other hand, entirely chosen by the Attorney General for each case. Some better mode ought to be devised. The revision of the criminal law has been for some time before the States; and the question is now in discussion before a Committee of that body.

FRANCIS ARTHUR.

## No. 12.

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*Answers to Questions.*

SERIES I.

*Joint Answers of Her Majesty's Procureur Général and Avocat Général, in the Island of Jersey, to the first Series of Questions.*

Procureur Général, and Avocat Général. 8 August, 1846.

1. The Attorney General practised as one of the Advocates in the Royal Court, from 1812 to 1823, and from this last date has held his present office.

The Advocate General practised as one of the Advocates of the Royal Court, from the year 1815 to 1823, and since this latter period has held his present office.

2. The only tribunal exercising criminal jurisdiction in the island of Jersey is the Royal Court, composed of the bailly, as presiding judge, and twelve assessors termed jurats; Her Majesty's Attorney and Advocate General; a greffier, or clerk of Court; the vicomte, and two denunciators, executive officers, and six advocates.

The jurisdiction of the Royal Court was established, in its present form, by certain constitutions granted by King John, when the islanders, retaining their allegiance to that sovereign, separated from continental Normandy.

The authority conceded to the bailly and jurats by these constitutions has been recognised and confirmed by charters emanating from almost every sovereign who has sat on the English throne, and more particularly and amply by Queen Elizabeth, and Charles I. and II.

The jurisdiction of the Royal Court extends over every species of criminal offence, with the exception of those specially reserved in the constitutions of King John, namely, high treason, and laying violent hands on the king's ministers in the execution of their office.

3. As there is no statute law in the island of Jersey for the classification or punishment of crimes (with the exception of two Orders in Council concerning manslaughter, and an Order in Council concerning sodomy and bestiality), the authority principally relied on in the discussion of questions arising upon the criminal law is the ancient custom of Normandy, the undoubted groundwork of our criminal procedure, and precedents contained in the records of the Royal Court; and frequently, when questions arise involving considerable doubt or difficulty, recourse is had to the principles of English law.

4. There are various modes of bringing to justice a party suspected of having committed an offence.

1. The Attorney General may proceed by representation made publicly to the Royal Court, in the nature of an *ex officio* information, stating the nature of the offence imputed to the party; upon which the Court order the arrest of the party charged, or that he be peremptorily summoned to appear and answer the suit. This proceeding is used in cases of high misdemeanour, such as libel or slander against the constituted authorities, abuse of trust in public officers, and the like.

2. In offences against the person or property, such as assault and battery, larceny, burglary, &c., the party aggrieved prefers a verbal complaint to the constable or one of the centeniers (being the chief officers of police) of the parish wherein the offence has been committed. The party suspected or charged is apprehended by one of those officers; and, as soon as the capture is effected, the officer applies verbally to the bailly, or one of the jurats deputed by him to that effect, for authority to detain the offender in the common gaol until an opportunity offers to bring him before the Royal Court. This authority is granted on the simple statement of the police officer, without hearing any evidence in support of the charge.

3. In a case of homicide, if the perpetrator of the crime is known or suspected, he is apprehended and secured as above stated. An inquest is held on the body in the following manner. The bailly issues his mandate to the vicomte, directing him to summon twelve men, and in the presence of the Attorney General or Advocate General to view the body, and to take the report of the jury, upon oath, as to the cause of death. The vicomte selects twelve men to form the jury, and proceeds with one of the crown officers to the place where the corpse is laid. The jury is sworn to declare truly and faithfully, without hatred, favour or partiality, how the deceased came by his death. Witnesses are heard, but not upon oath; the Vicomte receives the verdict of the jury, writes it at the foot of the bailly's mandate, and on a future day returns it into Court, the jury being also present, and called at the bar. The bailly asks each juryman separately if he confirms his report. If they all do so, the verdict is recorded; if they alter or vary their first verdict, it is so stated in the record.

4. In offences of a more trivial nature, such as breaches of police regulations, &c., the constable reports the case to the Royal Court, and an order is made to summon the supposed delinquent to answer the charge.

5. In minor offences, such as breach of the peace or of police regulations, the Court disposes of the case summarily without the formality of a jury; the defendant pleads to the charge; and the Court orders, if necessary, witnesses to be summoned on a future day, when the matter is decided; in the mean time, if the party had originally been apprehended, he is allowed to put in bail, or in default of bail is remanded to prison.

6. In cases where there is no exercise of summary jurisdiction, the party charged is, as soon as it can conveniently be done, brought before the Court, composed of the bailly and two jurats, by the constable of the parish wherein the offence was committed. The constable hands to the Attorney General a detailed report of the circumstances under which the capture was effected; the Attorney General reads this document, in presence of the party charged, and exhibits an "*accusation*," or indictment granted on the constable's report; the prisoner puts in his plea of Guilty or Not guilty. If the former, the Court either proceed to give judgment, or, if it be a charge of felony, refer the case to the full Court, composed of the bailly and at least seven

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jurats. If the accused party pleads Not guilty, the Court authorize the Attorney General to produce evidence in the following form: "*Il est permis au dit Sieur Procureur Général de la Reine d'informer.*" The party accused is then remanded to prison till such time as evidence can be procured, or enlarged upon bail if the offence is bailable. The accused party is then considered to be on his trial.

7. The subsequent proceedings take place partly before the same Court, namely the bailly and two jurats, and partly before the full Court, composed of the bailly and at least seven jurats. The evidence is heard before the bailly and two jurats, in presence of the accused party, and taken down in writing. When all the evidence, both against and for the accused, has been taken, a day is appointed for the trial of the cause. The Attorney General directs the same constable, who, in the first instance, exhibited the charge against the accused party, to bring twelve of his officers to form, with himself, the first or petty jury, for the trial of the prisoner, on the appointed day. The Court is then composed of the bailly and not less than seven jurats. The constable and his twelve officers are placed in the box: the accused party is allowed a challenge, but only on specific grounds: no oath is administered to the jury. The whole of the proceedings, including the different rules and orders of Court, and the whole of the evidence previously taken in writing, are read by the Attorney General to the jury; the counsel for the defence is heard, and the Attorney General in reply. The jury retire in custody of the vicomte, who takes with him, and lays before the jury, the indictment and the written depositions, in order that they may refer to them, if needful. When they have made up their mind, the vicomte brings them again into Court, and, if they are unanimous, the constable delivers the verdict; if they find the accused guilty, in these or similar terms: "*L'accusé est plutôt coupable qu'innocent du crime mis à sa charge.*" If they find him innocent, the verdict is "*plutôt innocent que coupable.*" If the jury is not unanimous, each juryman in rotation delivers his opinion secretly to the bailly and jurats; and the opinion of the majority is announced by the bailly as the verdict of the jury. If the prisoner is declared more innocent than guilty, he is forthwith discharged. If he is found more guilty than innocent, the Court declare him to be criminally indicted. The prisoner is then entitled to appeal to the *Grande Enquête*, or jury of twenty four; or he may waive his right, and submit to have judgment passed. If he submits, the sentence is immediately pronounced. If he appeals, he is remanded to prison until the Attorney General can call the grand inquest of the country, of which the accused has demanded the benefit.

Within two or three days, the Court meet, constituted as before, for the final trial of the case. Twenty-four men, selected by the Attorney General from amongst the most intelligent inhabitants of the parish wherein the crime has been committed, and the two adjoining parishes, eight from each, are summoned to serve as a jury, and also a few supplementary jurymen from each parish in case of challenges, sickness or absence of any of those who are intended to form the jury. The prisoner may challenge any of them, but, as in respect of the first jury, only on specific grounds. When the jury is complete, they are sworn "to declare well and faithfully what they shall find in their conscience relative to the crime of which the party is accused, namely, whether he is more guilty than innocent, to charge or discharge him, and that they will do so without favour or partiality, as they shall answer it before God." Precisely the same form is then gone through which had previously been observed in the first trial. On the return of the jury into Court, with the vicomte, if they are unanimous, the foreman delivers the verdict. If they differ, they each deliver their opinion to the bailly secretly; if twenty out of the twenty-four concur in finding the accused more guilty than innocent, he is declared by the bailly duly attainted and convicted of the crime or offence on which he had been criminally indicted, and sentence is immediately passed. If five or more out of the twenty-four concur in finding the party accused more innocent than guilty, he is forthwith discharged.

8. The proceedings are always instituted by the Attorney General on the part of the Crown, or, in his absence, by the Advocate General. The proceedings may be abandoned by the public prosecutor at any of their stages, when he finds that the evidence is not sufficient to support the charge. Such an abandonment has the effect of an acquittal.

9. The charge against the accused party is usually put in a definite form and in writing, when he is brought before the Court by the police. Sometimes, when the charge is complicated, or when further inquiry is necessary, the party accused is remanded for a limited period; but this is of rare occurrence, the Attorney General being generally prepared to file the indictment at the usual period. The accuser cannot vary or alter the form or substance of the charge when once it has been filed.

10. If the party charged admits the facts, but denies their relevancy to support the charge, his counsel may be heard in support of his plea, and the Attorney General in reply. If the Court decide in favour of the accused party, he is discharged; if against him, the case is proceeded with.

11. If the party simply denies the facts alleged against him, the Court order that witnesses shall be summoned.

12. The party confining himself to a denial of the relevancy of the charges is not thereby concluded as to the facts.

13. Nor, if he confines himself to a denial of the facts, is he in a criminal prosecution, concluded as to their relevancy.

14. The party charged is entitled to the assistance of counsel and other legal advisers. He may have the assistance of more than one counsel; but only one can be heard in his defence. He may select his own counsel; and, if he does not, the bailly assigns him an advocate. This is always done, whether the party accused has or has not the means of defraying the expense of legal assistance.

15. When the Court have ordered that witnesses shall be summoned, or have authorized the

Attorney General to produce evidence in support of the charge, the Attorney General causes summons to issue to those persons who are to be heard as witnesses. The summons are served by the vicomte or his deputy; and the party failing to appear to give his evidence is amerced in a small fine to the Queen, and is liable to pay certain expenses occasioned by his default; the Court order him to be seized and brought up by the officer on the day appointed for a further hearing of the case. The accused party gives the names of his witnesses to the Attorney General's agent; and they are likewise summoned at the suit of the Crown to give their evidence, and liable on default to the same penalty as the witnesses for the prosecution.

With respect to documentary evidence, there is no process established by law or practice to compel its production in criminal cases; nor are we aware that any decision has ever been given on the subject. In civil suits, if, on the examination of a witness, a document in his possession is brought in question, as necessary to be produced, the Court usually order it to be exhibited; and we presume that the same proceeding would be had recourse to, should the production of any document be found material in a criminal prosecution.

16. In criminal prosecutions, as soon as the party accused is put on his trial, a sufficient number of days are appointed to take the evidence in writing; and each day a sufficient number of witnesses are summoned to occupy the time of the Court. The evidence is taken before the bailly and two jurats; the witnesses produced are sworn to declare the whole truth without favour, hatred or partiality, as they will answer it to God at their peril. An attorney takes the evidence in writing, generally by questions and answers; each question and answer being read aloud by the attorney to the Court, as the evidence proceeds; when the deposition is finished, either altogether or for the day, it is signed by the witness.

17. The party accused is always present when evidence is taken against him. We know of no case where evidence was ever taken in his absence; nor would such evidence be received as part of the proceedings on the trial.

18. The party accused may produce evidence on any day appointed for taking evidence in his case; but usually the witnesses for the prosecution are first examined, and then the witnesses for the defence. Nevertheless, the accuser may recall witnesses to be further heard, and even hear fresh evidence after the witnesses for the defence have been heard; and the accused party may then, if he judges it material, call fresh evidence on his part.

19. The accused party can question the witnesses produced against him as soon as they have been examined in chief, and to the full extent prescribed by the rules of evidence. He may even have them recalled, and re-examine them at any time before trial.

20. The accuser cannot call fresh evidence after the day when the *enditement* or petty jury is called to try the accused. There are instances where the accused party has been allowed to call evidence in support of his defence before the *Grande Enquête* after he had been criminally indicted by the petty jury.

21. All the evidence is taken down in writing.

22. We have already described the mode in which the evidence is used at the trial. No proof is allowed, either against or on the behalf of the accused party, that the written evidence does not correctly represent the whole of what was deposed to; the accused party being always present with his counsel when the evidence is taken, and having the privilege of calling the attention of the Court to any error or omission in the evidence.

23. The counsel of the party charged may be heard on any question of fact or law; and, when a question has been decided against him by the inferior Court, he can have it re-heard before the full Court, and can subject the witnesses for the prosecution to as full a cross-examination as is consonant with the rules of evidence, and may examine and re-examine his own witnesses as fully as he judges it necessary for the due defence of his client.

24. The Attorney General is always heard last.

25. The bailly and jurats decide questions of law. The juries decide the fact.

26. Judgment is awarded by the Court, in conformity with the opinion of the majority of the jurats present; if they should be equally divided in opinion, the bailly has the casting vote; otherwise, he has no voice in the matter.

27. The Court has the power of suspending its proceedings, but only on account of some legal impediment, such as the absence from the island of a material witness for the prosecution or the defence, or the absence or incapacity of counsel for the party accused, or where, on the representation of the accused party that a strong prejudice existed against him, a delay should be judged necessary to ensure a fair trial.

28 and 29. We presume that the information sought by these two questions may be gathered from the answers to those previously proposed.

30. When judgment is given against the accused party, it is carried into effect by the vicomte. If it be a sentence of imprisonment, the culprit is forthwith taken from the Court House to gaol. If it be transportation, he is remanded to prison until the Queen's pleasure as to the further disposal of his person is made known by her Order in Council. If it be a capital punishment, the time when it shall be carried into execution is not fixed by the Court; but usually the Court allow a sufficient delay to enable the culprit to sue the Crown for pardon, or for a mitigation of the penalty. The practice is to execute the judgment on the Saturday after the delay is expired.

31. The forms used at the various steps of the proceedings, and the oaths taken by the witnesses and the members of the Court, having been furnished to the Commissioners by the greffier of the Royal Court, it is needless to repeat them here.

32. The bailly is appointed by the Crown during pleasure. The twelve jurats are elected by the people; every person in the island assessed to the parish rate of taxes having a right to vote at their election. The Attorney General, Advocate General and Vicomte are appointed by the Crown for life. The greffier, the denunciators and the advocates are appointed by the

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bailly, also for life. The constables and centeniers are elected by the inhabitants of their respective parishes who are assessed to the rate, and hold their office for three years. The police officers who, with the constable and centeniers, are liable to serve on the petty jury, are:—

1. The vingteniers, who are elected by the vestry of their respective parishes; they remain in office three years.

2. The constables' officers, who are also elected by the vestries of their respective parishes, and hold their office four years in the parish of Saint Helier, and seven years in the eleven other parishes.

34. The imperfections of our present system may be classed under four heads:—

1. The want of a preliminary examination of a party suspected of an offence before he is committed and put upon his trial.

By the present mode of proceeding, as before stated, the party is charged upon the simple declaration of the party aggrieved; he is arrested by the police; he is not brought before any magistrate to answer the charge; but upon the showing of the police officer the magistrate gives an order for his detention until he can be brought before the Court. When there is no evidence heard to show that there are sufficient grounds to put him on his trial, the Attorney General, if the facts stated in the constable's report warrant an indictment, is bound to prosecute, and the Court to commit; and it happens sometimes that, after a detention of some weeks, when the witnesses for the prosecution are heard, they altogether fail in establishing the charge. Besides, the constable's report is all that the Attorney General has to guide him in framing his indictment; which not unfrequently leads to errors fatal to the case: a result which would always be avoided, if that officer had before him the evidence taken at the examination of the party charged.

The establishment of a police magistrate, before whom every person charged should be brought for examination before committal, would, in our opinion, be a very useful measure.

2. The manner in which evidence is heard in criminal cases is very unsatisfactory. It is taken before the bailly and two jurats, and written down. In cases of some magnitude this takes several days; and, the Royal Court being occupied with civil as well as criminal cases, it occasions considerable delays, and lengthens the imprisonment before trial. Moreover, as the juries do not hear the witnesses depose, and as the degree of credibility which a witness deserves can often be better estimated by the manner in which he delivers his evidence than by its import, they have no means of forming a correct opinion upon the subject. They must receive as evidence the words of the deposition as they appear in the written document which is read to them at the trial.

An alteration in that respect would, we think, be advisable.

3. Some change is required with respect to the *enditement*, or petty jury. It is at present composed of the constable and officers of police of the parish wherein the offence has been committed; and it does not seem altogether just that the persons who have been active in detecting the offender, in bringing him to justice, and in procuring evidence to convict him, should afterwards form the jury to try the case.

4. It would also be more convenient if criminal trials should take place at stated periods. Mixed up as they are with the civil causes, one set of cases must frequently interfere with the other; and this intermixture is the frequent cause of long delays in the administration of justice.

THOMAS LE BRETON, *Procureur Général.*
J. W. DUPRE', *Avocat Général.*

*Jersey, 8th August*, 1846.

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John Hammond Esq. 20 July, 1846.

*Answers of John Hammond, Esq., Senior Advocate of the Royal Court of Jersey, to the first Series of Questions.*

1. I was apppointed one of the Advocates of the Royal Court, by the late Bailly, Lord de Carteret, in the year 1821; and from that period to the present time have practised as a member of the bar.

2. The Royal Court of this island, "*La justice Royale*," is the tribunal possessing criminal jurisdiction in Jersey. The creation of the office of jurats (the magistrates who compose this Court) goes as far back as the reign of King John, as appears by the constitutions of that monarch. This Court takes cognizance of all crimes and misdemeanors that take place within the limits of its jurisdiction, save treason and cases styled in the constitutions above referred to "*nimis ardui*," which I take to mean such as may affect the superior members of the Court, or differences arising between the civil and military authorities of the island, which, from local circumstances, cannot competently be investigated by the island tribunal.

3. The authorities mainly relied upon for the elucidation of the principles of criminal jurisprudence, and also for the awarding and adjudicating of punishments, are the English law books; recourse is also had to the Norman commentators, and sometimes, but very rarely, to the Code Napoléon and French authors. Precedents from our own Court Rolls are also consulted.

4. The more usual mode of proceeding against a suspected offender is by the arrest of his person by the constable (after verbal information given him) of the parish wherein he resides, who, thereupon, obtains leave from the chief magistrate to place the prisoner provisionally in

the custody of the gaolor of the island prison, until he is presented before the Court to answer to the charge brought against him by the public prosecutor, viz. the "*Procureur Général.*"

5. The Court before whom the prisoner is brought in the first instance is composed of the bailly and two jurats, whose functions do not extend beyond their receiving the police officer's report, the "*Procureur Général's*" written accusation against the prisoner, and the prisoner's plea thereto. This Court also determines on the question of bail, if propounded.

If, however, the matter do not exceed a breach of the peace or a mere misdemeanor, and the prisoner admits the facts and submits to the Court, the Court proceeds forthwith to pass sentence. But, if the accusation is of a grave character, and the prisoner pleads Guilty, then the Court, on the motion of the prosecutor, remands the convict, in order that on a future day he may be brought up before the full Court, composed of the bailly and seven jurats (at least), to receive sentence.

6. The preliminary proceedings before an accused party is put upon his trial, and the steps taken to secure his appearance, are, as already stated:—1st. His arrest by the police officer; and, 2ndly, his temporary custody until presented before the Court. If, however, the matter is bailable, the officer, upon conferring with the Crown officer, may take bail for the prisoner's appearance in Court.

7. The accused party is tried before the Royal Court, as before stated.

8. The proceedings are invariably instituted at the suit of the Crown officer, the "*Procureur Général;*" he alone can stay or abandon proceedings. After such an abandonment, duly recorded, no future similar accusation can be brought against the party thus released from a former prosecution.

9. On the first appearance of the prisoner at the bar of the tribunal, the public prosecutor, after entering the report of the police officer, presents a written accusation against the prisoner, who usually pleads forthwith thereto: but, when the case requires it, the prisoner may ask for, and almost invariably obtains, a delay to consider the accusation before recording his plea. I know of no instance where the accuser has been allowed to alter his first accusation; he might in diminution, but certainly not in aggravation, of the accusation. The party accused, on the other hand, may from time to time alter or vary his plea, which is, at every sitting of the Court to hear his case, taken down in writing.

10. In this case the matter would not go to a jury, but the question of law would be submitted to the decision of the bench.

11. When the party pleads "Not guilty," the Court issues an order empowering the prosecutor to inform against the prisoner, that is to bring evidence in support of the accusation; and the prisoner may also bring witnesses on his behalf.

12. If the accused party pleads to the relevancy of the charges, it is only in the nature of a preliminary or interlocutory plea, which in nowise precludes his pleading afterwards as to the facts alleged against him.

13. The denial of the facts by the prisoner does not debar a subsequent plea as to their relevancy.

14. The accused party is entitled to legal advice and assistance. He may have more than one advocate; but only one can speak on his behalf. He may select his counsel, whether he have or have not the means of defraying the expense of legal assistance.

15. Both parties have the power of producing evidence at any stage of the proceedings prior to the empannelling of the "*enditement,*" or first jury; and even there are cases when evidence has been received after the verdict of the "enditement." The mode of compelling witnesses to appear is similar to that practised in civil cases, namely by a summons served by the proper officer, and, in case of default, by amercement and arrest of the person of the witness.

16. Evidence is first received after the Court has granted an order empowering the prosecutor to inform against the accused. The evidence is taken in writing before the inferior Court, that is the Court composed of the bailly and two jurats.

17. The prisoner must be present at the hearing and taking down of the evidence.

18. When the witnesses produced by the prosecutor (in criminal causes they are called "*informateurs*") have been heard, and their evidence taken down, the accused party may proceed to hear his witnesses, styled "*témoins à décharge,*" whose evidence is also taken down in writing.

19. The party accused has the full benefit of cross-examining the witness for the prosecution.

20. Ordinarily the evidence is closed when the cause is ripe for hearing before the first jury the "*enditement.*" But there are instances, as before stated, when fresh evidence has been received before the jury of appeal, the "*Grande Enquête.*"

21. As before observed, the whole of the evidence is taken down in writing.

22. The first jury being empannelled, the evidence collected against and on behalf of the prisoner is read aloud by the Crown officer or officers: if any of the members of the jury require it, such part of the evidence as is in English is translated and explained by the prosecutor. As the whole of the evidence is given in presence of the prisoner, I conceive that proof affecting the correctness of the written evidence would not be allowed, because the prisoner, whilst the evidence is being written down, can state his objections, if he deem it inaccurately recorded, and the Court will always hear him on such or similar objections, and, if his objection be valid, it will be received and acted upon at the time by the Court.

23. The counsel for the defence may propound any questions of fact or law, in the order he deems most advantageous to the prisoner, and has full power to examine the witnesses.

24. The prosecutor is heard last.

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25. The Court, that is the bailly and jurats, are the judges of the law. The "*enditement*" and "*grand enquête*" pronounce respecting the facts.

26. The judgment (after the verdict of the jury is given) is awarded by the bailly and jurats.

27. By what has been already stated, it will be seen that several days are occupied in criminal prosecutions, during which there are intervals of time of greater or less duration, subordinated by the circumstances of the case. But, when the jury is empannelled, no adjournment or suspension takes place.

28. At the risk of repetition, I may state as briefly as possible the mode of accusation and trial. The party charged having been informed against to the constable or centenier of the parish where the alleged offence has been committed (the complaint addressed to the constable is a mere verbal one, and not on oath), the police officer proceeds in search of the supposed delinquent; and, if he find him within the limits of his parish, he seizes and searches him forthwith, and, according to the nature of the offence, makes or orders a search in the prisoner's lodgings, or other places, for such articles, weapons or other effects as may lead to the detection of the offender, or tend to throw light on the further investigation of the matter. He then applies to the chief magistrate for power to place the prisoner in the custody of the keeper of the prison. He then prepares a written report of all the facts and circumstances of the case, and delivers it to the "Procureur Général" (the Attorney General). The prisoner is brought up at the first sitting of the Court after his apprehension. The constable then, through the "Procureur Général," presents the prisoner before the Court, together with his written report, and all articles, weapons or other effects seized and secured by the police; which articles or weapons are deposited in Court, and there remain in the custody of the Court till the end of the trial. The "Procureur" then files an accusation against the accused. The accused, before pleading, selects his counsel (if the matter is of great importance he usually sends for an advocate to consult with him before being presented in Court), and then pleads to the accusation, which plea is duly recorded by the clerk of the Court. If the plea is "Not guilty," the prosecutor is allowed to bring evidence in support of the charge; and, if it is not a bailable offence, the accused is then sent to prison, "*est constitué prisonnier*"—is constituted a prisoner. At a subsequent sitting, the "informateurs," or witnesses for the Crown, are summoned, and their evidence taken down in writing by the "écrivains," or attorneys, who are specially convened by the chief magistrate for that purpose. The prisoner is present at every stage of the trial, and is sent back to prison at the close of each day's proceedings. (I may here remark that, if one or more of the witnesses (either for or against the prisoner) are on the eve of departure from the island, and cannot therefore be heard before the Court, or incapacitated, through illness, from appearing, an order is obtained from the Court to have their evidence taken before the "vicomte" (or sheriff). If there be many witnesses in a criminal trial, four or five, or even more, days may be taken up in receiving the evidence. When the evidence is closed, a day is appointed for bringing on the trial before the first jury, the "*enditement.*" This jury is composed of thirteen (13) members of the police of the parish where the offence has been committed: formerly the rule was to empannel the members of the police of the parish where the prisoner resided; but the practice that obtains now is preferable; as, if there were several prisoners, of different parishes, under one accusation, it might be difficult to determine how to form the jury. The constable, if not a witness, is foreman of the jury. The prisoner may challenge one or more members of the jury, but for cause only (the validity of which is decided by the Court). The proceedings must take place before a full Court; that is the bailly and seven jurats at least. The accusation is then read to the prisoner, and his plea is again recorded; if still a plea of "Not guilty," the prosecutor proceeds to read the report, the accusation, the depositions, and all documents having relation to the trial; after which, the prisoner's counsel addresses the "*enditement*;" the prosecutor is then heard in support of the accusation. The bailly, the president of the Court, may sum up; and then the "*enditement*" retire in charge of the "vicomte," or sheriff. The whole of the documents are placed in the "vicomte's" hands, for the further consideration of the members of the "*enditement,*" if they require it; and also the articles, weapons or other effects deposited in Court may be sent up for their inspection. On their return into Court, the foreman, if the members of the jury are all agreed, declares the verdict. If the jury is not unanimous, the members go up one by one to the bailly, and deliver their opinion separately; but so as only to be heard by the bailly and the jurats collected around him. The prisoner is either acquitted or convicted by the majority of the "*enditement.*" The president of the Court declares the result of the scrutiny; if favourable to the prisoner, he is immediately discharged; if against him, he may either submit to the verdict—in which case the "Procureur" proposes the nature and amount of punishment to be awarded. The prisoner, before the Court pronounces, is heard by counsel in mitigation, after which the Court passes sentence—or,

29. The prisoner may appeal to another jury, the "*Grande Enquête,*" a privilege he has a right to claim as a matter of course. Whereupon he is remanded to prison (formerly in irons, but now this is dispensed with) until the "*Grande Enquête*" be convened. On the day appointed, the full Court again assembles, and the members of the "*Grande Enquête*" are called, and the jury constituted. It consists of twenty-four (24) members, chosen from the parish where the offence has been committed (formerly, from the parish where the prisoner resided) and the two adjoining parishes, eight from each parish, men of the highest standing in their respective parishes. If the prisoner has no challenge to offer, or when such as he may have presented (which must, like the preceding, be for cause) are disposed of, the members of the "*Grande Enquête*" are sworn in by the president of the Court. The members of this jury are chosen by the "Procureur," and are not summoned until the evening preceding the day of trial. The same mode and order of proceeding take place as before the "*enditement*;" but

twenty of the members of the jury at least must concur to convict the prisoner. The "Procureur" has no power to appeal in criminal cases.

30. When the prisoner is convicted, the Court, on the motion of the prosecutor, decrees the punishment to be inflicted, and the "vicomte" (the sheriff) is charged to see it duly put into execution; the order of the Court being his warrant or authority to carry the same into effect.

31.

(1.) A. B., saisi de fait et presenté en justice par le connétable de la paroisse de . . . ., a été accusé par le Procureur Général de la Reine, en conséquence du rapport du dit connétable, d'avoir . . . . . L'accusé a sur ce plaidé et fait sa déclaration, qui a été rédigée et logée au greffe, et il a été constitué prisonnier sous la dite accusation, instance du dit Sieur Procureur Général de la Reine, auquel il est permis d'informer. Etant le dit rapport, ainsi que (*the articles or weapons, or effects, if any*), produits en cour par le dit connétable demeurés logés au greffe.

(2.) A. B., convenu à l'instance du Procureur Général de la Reine pour ouïr dépôt d'informateurs sur l'accusation qui lui est faite en conséquence du rapport du connétable de la paroisse de . . . . . L'accusé a été renvoyé en prison; et il a été permis au dit Sieur Procureur Général de la Reine d'informer plus outre.

(3.) A. B., sous accusation d'avoir . . . . . , convenu à l'instance du Procureur Général de la Reine pour ouïr le rapport des hommes de l'Enditement de la paroisse de . . . sur la dite accusation, Messrs. . . . (*names of the members of the jury*), actionnés par le dit Sieur Procureur Général de la Reine pour passer comme hommes d'Enditement à la charge ou décharge du dit A. B., sous la dite accusation.

(4.) A. B., sous accusation d'avoir . . . . . , convenu à l'instance du Procureur Général de la Reine pour ouïr le rapport des hommes de la Grande Enquête du pays, dont il a demandé le bénéfice, et voir ensuite ordonner par justice sur la dite accusation.

(5.) A. B., saisi de fait et presenté en justice par le connétable de . . . . sous prévention d'avoir . . . . . , Vu la négation du dit A. B. des faits contenus dans le dit rapport, il est ordonné que ceux qui peuvent en avoir connoisance seront convenus; et dans l'entretemps il est envoyé en prison, sauf à lui de donner caution de se réprésenter et répondre à la poursuite toutes fois et quantes sur la pénalité de . . . . livres sterling, argent de la Grande Bretagne, lequel cautionnement l'officier est autorisé à recevoir.

(6.) A la requête du Procureur Général de la Reine, le vicomte est autorisé à prendre la déposition par serment de C. D., lequel est sur son départ de cette île, pour valoir ce que de raison dans l'accusation qu'il fait à A. B., suivant l'acte de la Cour à ce sujet, l'accusé étant à ce appellé.

(7.) A. B. et C. D., sa caution contre le Procureur Général de la Reine, les actionnant d'ouïr dépôt d'informateurs sur l'accusation faite audit A. B., en conséquence du rapport du connétable de la paroisse de . . . . : le tout selon que plus au long est contenu audit rapport et en l'acte de la Cour à ce sujet.

(8.) MONSIEUR, Ce , 184 ,

JE suis chargé par Monsieur le Procureur Général de la Reine de vous prévenir que la Cour doit s'assembler en corps . . . . prochain, à . . . heures, pour des causes criminelles. Vous êtes, en consequence, requis d'y faire convenir un nombre suffisant des officiers de police de votre paroisse pour passer comme hommes d'enditement à la charge ou décharge de A. B.

J'ai l'honneur d'être,
C. D.,
Autorisé du Procureur Général de la Reine.

(9.) A. B.
C. D.
E. F.
G. H. etc.

Prévôt de (*Parish*). Ajournez à . . le . . de . . 184 . , á comparoître à St. Hélier dans la Cour Royale devant justice, les sus-nommés contre le Procureur Général de la Reine, les actionnant de passer comme hommes de la Grande Enquête du pays à la charge ou décharge de Q . . . sur l'accusation dont il a été endité criminellement suivant l'acte de la Cour à ce sujet, et recordez.

C. D.
Autorisé du Procureur Général de la Reine.

(10.) Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous declarerez la pure, pleine et entière vérité sur l'accusation du Procureur Général de la Reine vers A. B.; ce que vous ferez sans faveur, haine ou partialité comme vous voudrez en répondre devant Dieu, à l'acquit de votre conscience.

(11.) Vous jurez et promettez par la foi et serment que vous devez à Dieu que bien et fidellement vous rapporterez à la Cour, ce que vous pourrez croire en votre conscience, sur le crime dont A. B. est accusé; sçavoir: s'il est plutôt coupable qu'innocent, à sa charge ou décharge; ce que vous ferez sans faveur ni partialité, comme vous voudrez en répondre devant Dieu.

32. The Bailly, "Procureur Général," "Vicomte" and "Avocat Général," are appointed by the Crown, and hold their office by patent. The jurats are elected by the inhabitants who

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pay rate; they hold their office for life. The constables and centeniers are elected by the suffrages of their rated parishioners, and hold their office for three years; they are eligible for re-election. The police officers are appointed by the parish vestries, and hold their office for seven years, except in the parish of St. Hélier, where the period is restricted to four years.

33. It does not occur to me that any thing further of any importance relating to our Criminal Law and procedure requires to be noticed.

34. In answer to this question, I respectfully suggest what appears to me to be defective in our present system.

1. The want of a preliminary investigation before putting a prisoner on his trial.
2. The very deficient mode of obtaining evidence, and imparting it to a jury.
3. The uselessness, inconvenience and impropriety of two recorded verdicts in the same case.
4. The objectionable mode of selecting the members of the "*Grande Enquête,*" the prosecutor being the party who possesses that power.
5. The disadvantage to the defence arising from the prisoner's counsel being precluded the privilege of replying to the Procureur's speech.

These disadvantages might, I think, without much difficulty be remedied. The more difficult question I conceive to be respecting the manner of carrying on a preliminary inquiry before putting the prisoner on his trial. This, I think, might be done by substituting to the "*enditement*" another jury, which might be styled a *Jury d'Examen,* composed of members chosen from among the most influential members of the community throughout the island, whose functions would be very similar to those of the grand jury in England, and might be composed of the same number of persons. Their duty would be to examine witnesses in presence of the prisoner, both in support of the charge and on behalf of the accused, for the sole object of deciding for or against a prosecution: no pleadings would take place before this jury. The majority of votes would form the opinion of the jury, which opinion would be simply endorsed on the constable's report or the "Procureur's" accusation. The jury might be intrusted with the choice of their chairman; and the documents and witnesses in support of the charge might be presented to the jury by the "Vicomte." It is respectfully submitted that a jury thus constituted would combine the advantage, not only of the grand jury, but of the examining magistrate, as the prisoner would be present and his witnesses might be heard. The proceeding would not, in most cases, be unnecessarily long, because, on hearing two or more credible witnesses in support of the charge, whose testimony as far as it went was conclusive, the jury might stop further inquiry, and order the matter to be sent forthwith to trial and make their endorsement accordingly. On the other hand, if there was not sufficient ground for a prosecution, it would be of incalculable benefit to prevent a prosecution before any recorded proceedings be for ever inscribed in the Criminal Rolls. This jury might, moreover (being composed of the first people of the community, their qualification depending on a high rate), have extended powers, such as the right of investigating and making presentments respecting the public establishments of the island, the prison, the hospital, &c.; and, from being chosen from the 12 parishes, men who at present are only in the habit of transacting parochial affairs, which tend to engender a certain party and narrow spirit, would have to cooperate with those of distant parishes; and thus petty differences of interest and influence would be merged in a more general and more extended sphere of action.

Efficiently to carry out the foregoing suggestion, it would be indispensable to appoint regular assizes, or stated and fixed periods for holding the Criminal Court. Indeed, under any circumstances, I consider that it would be fitting that stated and fixed periods be set apart for the administration of criminal justice, for the due consideration of such grave and important matters which, properly to be discussed and decided, require to be attended with that solemnity which the nature of such proceedings demands. Assuming, then, that assizes were established, I consider that a *jury d'examen* ought to assemble on the first day, and proceed immediately to the duties assigned to it; and then those prisoners left for trial by its decision would be proceeded against forthwith at the suit of the "Procureur" before the "*Grande Enquête,*" instructed by *vivâ voce* evidence, thus dispensing altogether with the "*Enditement*" or jury of 13. Indeed, I think it could be traced that in the origin the jury composed of the police officers was merely *jury d'examen,* having only to determine if the party charged was to be indicted, *endité.* But, now that it is to all intents and purposes a jury returning a verdict on the facts of the case, whose judgment remains for ever recorded, this proceeding is fraught with many serious evils; it places the two juries in an invidious position each to the other, and gives rise to this anomaly, that, whereas if six members of a jury declare a man "Not guilty" he is condemned, whilst if subsequently five members only of another jury declare him "Not guilty" he is acquitted, and when the facts of the case and all the attendant contingencies are precisely similar, and presented to the jurymen of both juries in precisely the same state. Moreover, a great evil, and indeed a manifest injustice, arises from recording two opposite verdicts in the Rolls of the Court. To contemporaries it is comparatively of little moment, as they may be acquainted with all the facts of the case; but in a small community, like our's, it is an evil to leave on record, to be seen by after generations, decisions which are virtually set aside and expunged.

The objection to this proposed change may be its too great complication, and, so to speak, its excess of machinery. If this objection was deemed insuperable, then I consider that a previous examination before a magistrate, as practised in England, is indispensable. This, efficiently carried out, might perhaps supersede the necessity of the first jury; though I think *both* these changes would be productive of much good.

I have said that a second defect arises from the mode of taking the evidence in criminal

cases. The disadvantage of this mode of proceeding is, I believe, very generally recognised and acknowledged. It is true that it affords to the defence the advantage of knowing most, if not all, the evidence adduced in support of the accusation before bringing forward any *témoin à décharge;* but I do not consider this sufficient to countervail the injury to the ends of justice consequent upon this manner of obtaining a knowledge of facts that are to guide a jury, whose members have not even the advantage of seeing one of the witnesses, and therefore are prevented from suggesting questions, the answers to which might be of such material assistance to them.

John Hammond, Esq. 20 July, 1846.

I have already alluded to the uselessness, inconvenience and impropriety of *two* recorded verdicts, and therefore deem the suppression of the *enditement*, or first jury, composed of the police officers, as essential to the better administration of our criminal proceedings. I consider the *grande enquête* as fully adequate, and in every way properly composed, rightly to fulfil the duties devolving upon this jury. Perhaps, instead of limiting the choice of its members to three parishes, it might be useful to extend it to the principal inhabitants of the island generally, who might be chosen by lot, or by the "vicomte" (sheriff), to serve when a *grande enquête* was required. This would also obviate the invidious, and, I think, objectionable, duty imposed upon the prosecutor. I speak merely of the theory of this part of our proceedings: for during the whole course of my practice I can testify that this duty (the selection of the members of the *grande enquête*) has always been performed with the utmost care and impartiality. I would also suggest that, as the proceedings of our juries are secret, and their votes (when not unanimous) given secretly, the members ought to be bound to secrecy by their oath, both as to their own vote and the votes of their fellows.

Another irregularity I have pointed out is respecting the order of the speeches of counsel; this, I believe, is admitted to be a defect, as well by the Crown officers as by the members of the bar. It is, however, I conceive, a matter of minor importance.

JOHN HAMMOND, *Advocate.*

*Jersey, July* 20, 1846.

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No. 14.

*Answers of Francis J. Le Couteur, Esq., Advocate of the Royal Court of Jersey, to the first Series of Questions.*

Francis Le Couteur, Esq.

1. I am an advocate of the Royal Court of Jersey.

2. The Royal Court alone. Its jurisdiction originated under the early Dukes of Normandy: but the first charter confirming its authority was granted by King John. Its jurisdiction extends over all crimes and offences; high treason, and laying violent hands upon the bailiff and jurats, excepted.

3. Chiefly Blackstone, &c., and the old Norman authors.

4. If the offence be serious, the party is put in custody, with the sanction of the bailiff or one of the jurats: then a report is presented to the Court by the constable (or mayor) of the parish, and the Attorney General is allowed to prosecute.

5. The Court exercises a summary jurisdiction over all minor offences.

6. See answer 4th.

7. Before the Royal Court, composed of the bailiff and jurats.

8. By the Attorney General. This functionary has alone the power of causing proceedings to be abandoned. Having once abandoned the prosecution, he could scarcely again institute criminal proceedings against the same party for the same offence.

9. At the first stage; and the written act of accusation cannot be altered.

10, 11, 12, 13. The form of proceeding is the same.

14. Yes. One or more, at his option. By himself. An advocate cannot refuse his gratuitous assistance.

15. Witnesses subpœnaed are obliged to appear. After the act of accusation has been read, a day is appointed for hearing them.

16. As soon as possible, evidence is taken in Court before the bailiff and two jurats.

17. The prisoner is always present.

18. After the Attorney General has produced all his evidence.

19. The cross-examination takes place, and to a great extent, after the Crown lawyer has finished.

20. The hearing of evidence closes immediately before the pleadings commence, so that fresh evidence could scarcely be produced after the pleadings.

21. All evidence is taken down in writing.

22. It is read to the jury by the Attorney General. When the evidence is taken down, the accused is free to object to any part of it, but not afterwards.

23. The greatest possible latitude is given to counsel.

24. The public prosecutor has the privilege of being heard last.

25. The jurats decide the law, and the jury the fact.

26. By a majority of the jurats.

27. The Court has the power to adjourn or suspend its proceedings, like any other Court.

28. The incidents to accusation and trial have been mentioned in the preceding answers.

29. The accused may appeal from the petty to the grand jury: he may also appeal from this last, in cases of murder, to the mercy of the Crown.

30. The viscount is charged to see sentence carried into effect.

31. The forms used at the various steps of the proceedings which are the subject of the

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Francis Le Couteur, Esq.

preceding questions have been answered in the preceding answers. The oath is administered to witnesses, by the clerk of the Court, in these terms:—

> "You swear and promise that you will declare the truth, and nothing but the truth, in the action of Her Majesty's Attorney General and the prisoner, which you will do without favour, hatred or partiality, as you shall answer to Almighty God."

The members of the Court do not take oath, except when sworn into office.

32. The jurats are elected by the people. The Bailiff, Attorney General, Viscount and Solicitor General are appointed by the Crown, and hold office during pleasure. They are amenable to the Queen in council.

33, 34. The Solicitor General has prepared a plan of criminal law, which is under the consideration of the authorities.

(Signed) FRANCIS JOHN LE COUTEUR.

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No. 15.

Francis Godfray, Esq.

*Answers of Francis Godfray, Esq., Advocate of the Royal Court of Jersey, to the first Series of Questions.*

1. I have practised as an advocate of the Royal Court of the Island of Jersey upwards of sixteen years.

2. The Royal Court of the island is the only tribunal that exercises criminal jurisdiction in the island; and its jurisdiction extends to all offences and crimes, with the exception of high treason.

After King John had lost the whole of the Duchy of Normandy, which was annexed to the French Crown, except the Channel Islands, which remained under his dominion, he gave a charter to the inhabitants of the Island of Jersey, granting or confirming to them certain privileges; the present constitution of the Royal Court, and its jurisdiction, are established by that charter.

The Royal Court consists of the bailly and twelve assessors, called jurés justiciers, or jurats. The bailly and two jurats form the inferior number in all criminal proceedings; to constitute a full Court, the bailly and seven jurats, at least, are required.

3. The criminal law of the Island is composed of the laws of the Duchy of Normandy, as they stood before the separation of the island; the common law, as it is established by precedents of the Royal Court; acts of the States confirmed by orders of the Sovereign in Council; orders of the Sovereign in Council; and a few Acts of Parliament, in which the island is specially mentioned.

The cruelty and severity of the old Norman laws have, however, been mitigated by the decisions of the Royal Court to meet the exigencies of the times.

The old laws of the Duchy of Normandy are set forth in the *Grand Coustumier*, and commented by Rouillé, Terrien and Houard; as no modern writer has written a commentary on those laws, no authority can be principally relied on before the Royal Court.

4. It is the duty of the *connétable* of the parish, who is *ex officio* a member of the States, and of the centeniers, the subordinate officers immediately under him, where an offence or crime is supposed to have been committed, to institute an inquiry; and, if, from the informations he receives, he sees sufficient grounds for a public accusation, he arrests the person suspected of being the offender; and, according to the nature of the offence, he either takes bail of his appearance before the Royal Court on a fixed day, or he states the case to the bailly, or to one of the jurats of the Royal Court, who, if he deems it expedient, gives him a written authority to commit provisionally the party charged to the custody of the keeper of the public prison; and, the next Court day or as soon as possible after, the *connétable* presents the party charged before the Royal Court, with a written report stating what has taken place and the material parts of the information he has received. This report is read to the Court by Her Majesty's Attorney General. It is the duty of the Attorney General to see that all offenders are brought before the Royal Court, and that no crime or great offence goes unpunished; he is *ex officio* the only prosecutor of crimes and misdemeanors in the island.

If the *connétable*, or *centenier*, does not consider that the nature of the offence or the circumstances of the case are sufficient to authorize the arrest of the accused party, he sometime enters a report of the case before the Royal Court.

The Court, after hearing the Attorney General, either orders that the accused party shall be arrested by one of the officers of the Court, or that he will be summoned to appear.

5 and 6. When the accused party is brought by the *connétable* before the Royal Court, composed of the bailly and two jurats, if the offence charged cannot subject the accused party to corporal punishment, the Attorney General reads the report of the *connétable*; and, if the accused party admits the facts, the Court gives judgment immediately; if the accused party denies the facts, the Court orders that witnesses shall be heard on a subsequent day; and the accused party is generally admitted to bail. Evidence is heard *vivâ voce* on a future day; and the Court, composed of the bailly and two jurats, decides the matter, and gives judgment.

If the offence charged is of a nature to subject the offender to corporal punishment, and which is to be tried by a jury, the Attorney General reads the report of the *connétable*, and forms a written accusation against the prisoner, setting forth clearly the nature of the offence with which he is charged.

If the accused party pleads *Not guilty*, the Attorney General is allowed to call evidence, and the Court, according to the nature of the offence or the circumstances of the case, either remands the prisoner to jail, or admits him to give security of his re-appearance.

If the prisoner pleads Guilty, and the offence is not of a very serious nature, the Court exercises summary jurisdiction, and gives judgment immediately; otherwise the report is entered, the *accusation* lodged *au greffe*, the plea of the prisoner is recorded in an act of the Court, and the matter is referred to the full Court, composed of the bailly and of seven jurats at least. The prisoner is brought on a subsequent day before the full Court; that gives judgment, after hearing the prisoner, by the means of an advocate, and the Attorney General in reply.

When the accused party has pleaded Not guilty, he is brought on a subsequent day before the Court, composed of the bailly and two jurats, in order that the witnesses, both for the prosecution and the prisoner, may be heard, and their evidence taken down in writing: when all the witnesses have been heard, the case is sent before a jury, called *enditement*, which is composed of the *connétable* of the parish where the offence has been committed, and twelve of his officers; the report, accusation and evidence is read to the jury by the Attorney General. An advocate is heard in favour of the prisoner, and the Attorney General in support of the accusation; the jury withdraws, and returns a verdict of *Guilty*, or *Not guilty*; if they disagree, the opinion of the majority forms the verdict.

If the accused party is found Not guilty, he is immediately discharged from the accusation: if found Guilty, he may acquiesce in the verdict, or he may appeal to a *grande enquête*, which is a jury, composed of twenty four persons selected by the Attorney General from the principal inhabitants of three parishes; eight from that in which the prisoner resides, and eight from each of two neighbouring parishes, when they are empannelled as a jury that are sworn to give a fair and impartial verdict: the same forms are gone through as before the *enditement*; and twenty must agree to find a verdict of Guilty, five being sufficient to acquit the accused.

The law does not allow a jury to proceed, except before the full Court; that is, as has been already stated, the bailly and seven jurats.

When the prisoner is found Guilty by the *enditement* and does not appeal to a *grande enquête*, and when he is declared Guilty by the *grande enquête*, the advocate of the prisoner is heard in mitigation of the punishment, and the Attorney General gives his *conclusions*, and the Court delivers judgment.

The *connétable*, or other officers who have arrested the prisoner, or taken part in the proceedings, cannot form part of the *enditement*.

7. The Royal Court is the only tribunal that can take cognizance of offences; I have been stating, in the preceding answer, how it is constituted. Whatever decisions the bailly or jurats may have given at any stages of the proceedings do not incapacitate them from acting as members of the Court at any future stages.

8. The proceedings against an accused party are always instituted by the Attorney General, or, in his absence, by Her Majesty's Solicitor General, who acts *ex officio* as Attorney General. The Attorney General may abandon the proceedings at any stages; such an abandonment has the same effect as an acquittal.

9. The charge against the accused party is put in a written and definite form by the Attorney General when he is brought for the first time before the Royal Court. The form or substance of the charge, cannot be varied.

10. If the accused party admits the facts, but denies their relevancy to support the charge, his advocate is heard in support of his plea, and the Attorney General has the reply, and the Court decides the question.

11. If the party charged denies the facts, the Attorney General is allowed to call witnesses to prove the facts alleged, and the prisoner may call witnesses to prove his plea, and rebut the evidence for the prosecution.

12. If the party charged confines himself to a denial of the relevancy of the charges, he is not thereby concluded as to facts.

13. If the party charged confines himself to the denial of the facts, he is not thereby concluded as to their relevancy.

14. The party charged is entitled to the assistance of an advocate; he may retain several; but only one is allowed to address the Court or jury. He selects his counsel. When the party is unable to defray the expenses the advocate acts gratuitously. If the party charged does not select an advocate, the Court assigns him one to watch the proceedings in his behalf.

15. When a witness is summoned to appear before the Court, and neglects to do so, the Court orders him to be arrested and brought before the Court on a subsequent day; and he pays the expenses incurred by his absence. When a witness is ill, or about to leave the island, the Court authorizes the *vicomte* to take his evidence, which always takes place in presence of the Attorney General, the party charged and his advocate.

16. It has already been stated, when evidence is first received, it is taken in presence of the Court, the Attorney General, the party charged, and his advocate; and, if the case is to be tried by a jury, it is taken down, in writing, by an attorney of the Royal Court.

17. No evidence is taken, except in the presence of the accused.

18. As soon as the witnesses for the prosecution have been heard, or even before, if the party charged requires it, and that the witness is ill, or about to leave the island.

19. The party accused is allowed to question and cross-examine a witness brought against him when he has answered the questions put to him by the Attorney General or the Court.

20. Evidence may be heard for or against the party accused till he is tried by the *enditement*; and sometimes the prisoner has been allowed to produce witnesses between the *enditement* and the trial by the *grande enquête*.

21. All the evidence received is put down in writing.

22. The evidence taken down in writing is read to the *enditement* and the *grande enquête*.

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No party is allowed to give proof that the written evidence does not correctly represent the whole of what was deposed to. That is impossible, as the evidence is taken down in presence of the Court and all the parties. The question is put, written by the attorney, read aloud to the witness, who answers *vivâ voce;* his answer is immediately taken down and read; it is competent to either party to cause any error to be immediately corrected; when the whole evidence is taken down, it is signed by the witness, and lodged *au greffe*, and forms part of the records of the Court.

23. The advocate of the party charged has a right to be heard on all questions of fact, or of law, and on all incidents which may arise in the questioning of witnesses.

24. The Attorney General has the privilege of being heard last.

25. The Royal Court decides questions of law and fact in all cases, except those that are to be tried by a jury, in which cases questions of law are decided by the Court.

26. By the Royal Court.

27. The Royal Court has the power to adjourn or suspend its proceedings at any stage, for any cause which the Court judges sufficient, such as the absence or illness of some material witness.

28. I consider that the incidents to accusation and trial have been sufficiently detailed.

29. If the party charged is tried by a jury when the *enditement* is called, which is always before a full Court, the Attorney General or the accused party may obtain the decision of the full Court on any plea or objection that has been at any stage of the proceedings overruled by the inferior number of the Court.

30. When judgment is finally given against an accused party, and he is condemned to imprisonment or corporal punishment, the *vicomte* is ordered to see the sentence carried into execution; if the accused party is condemned to pay a fine awarded to Her Majesty, an officer, called *prévôt*, levies the fine.

31. The forms used at the various steps of the proceedings will, no doubt, be furnished to the Commissioners by the Attorney General and the *greffier* of the Royal Court, as well as a copy of the oaths taken by the witnesses and members of the Court respectively: the oaths of all the members of the Court and witnesses are contained in the Code of Laws of 1771.

32. The bailly is appointed by the Crown; the 12 *jurés justiciers* or jurats are elected for life by the rate-payers throughout the island. The *connétable* and *centeniers*, his immediate subordinate officers, the oldest of whom replaces him officially, when out of the island or incapacitated through illness or some other cause from performing the duties of his office, are elected by the rate-payers of their respective parishes. The *vingteniers* and *officiers du connétable* are elected by the parish assembly, composed of those persons who pay a certain rate, and the *connétable* and his officers. The *vingteniers* are elected for three years, and the *officiers du connétable* in the country parishes remain in office seven years; those in the parish of St. Hélier only four years.

33. I think the preceding answers are sufficient.

I am not ready to point out the defects and suggest the improvements in the present system: and, I think, this cannot be done with advantage before all the questions have been sent by the Commissioners and the various answers obtained.

FRANCIS GODFRAY.

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## No. 16.

Peter Le Sueur, Esq.

*Answers of Peter Le Sueur, Esq., Advocate of the Royal Court of Jersey, to the First Series of Questions.*

1. I am an advocate of the Royal Court, and have practised since 1838. I have filled the office of chief constable of St. Helier since 1839, having been re-elected in 1842 and 1845.

2. The Royal Court. Its jurisdiction has originated in a charter of King John, confirmed by several successive sovereigns; and it extends over offences of every description, high treason and laying violent hands on the Queen's officers excepted.

3. Precedents of the Royal Court, and, for the general principles of criminal law, Blackstone and Russell.

4. The information is generally given to the constable of the parish, or to one of the centeniers. If the offence is such as to warrant the seizure of the person, the constable or the centenier, after having investigated the circumstances of the case and ascertained what evidence may be brought forward, proceeds to arrest the suspected party, and then applies to the chief magistrate, or other magistrate authorised by him, who gives an order to sanction the imprisonment, or directs that the party be admitted to bail, or liberated, as the case may be. In cases admitting of doubt, the Crown officers are generally consulted before the party is arrested.

The viscount and the two *dénonciateurs* of the Royal Court have also occasionally arrested persons for criminal offences.

When the offence is not such as to warrant the arrest of the person, a report is presented to the Court, through the Attorney General, by the constable of the parish where the offence has been committed; and the Court, on the conclusion of the Attorney General, orders the suspected party to be summoned or arrested, as the case may be.

The Attorney General may also *ex officio* lay an information before the Court, when an order is made for the delinquent to be arrested or served with a summons to appear.

5. Misdemeanors are tried by the Royal Court without the intervention of a jury; but the distinction between offences that are to be tried by a jury and those that may be disposed of by the Court is not very clearly established.

No other Court or officers exercises a summary jurisdiction.

6. The suspected party, whether he has been admitted to bail or put in jail, is brought before the Court on an early day; and the report of the police, stating all the material facts of the case, is read by the Attorney General, with whom it has been previously left for his consideration. The Attorney General also reads the indictment or *accusation* which he has prepared; and the prisoner is called upon, after he has chosen a counsel, or a counsel has been appointed to him by the Court, to present his defence. He may ask time to consider the indictment, or plead Guilty or Not guilty. In the latter case, the Attorney General is empowered to summon witnesses or *informateurs* to appear on a future day; and, in the mean time, the prisoner is sent back to jail, or admitted to bail, if the offence is bailable.

7. Before the Royal Court. The evidence is taken down in writing before the bailiff and two jurats; but the juries are empannelled, and the trial proceeds, before the full Court, composed of the bailiff and seven jurats.

No party can be put on his trial but by a judgment or order of the Court.

8. By the Attorney General. The Attorney General, with the sanction of the Court, may, at any stage of the proceedings before the jury is empannelled, abandon the accusation, if the evidence is clearly insufficient to support the accusation. It is tantamount to an acquittal, unless some important proof of the guilt of the party is afterwards discovered.

9. When the party is first brought before the Court, on his being presented, the Attorney General reads the indictment, or *accusation:* after the party has put in his plea, it cannot generally be varied, as it is embodied in the Act of the Court. But, in a few cases, the Attorney General has been allowed to correct some errors in the *accusation*, when discovered before the accused party had left the Court.

In such cases the accused party may, of course, alter his defence.

10. The question is argued before the Royal Court.

11. The Court orders witnesses to be heard on a future day.

12. He is not concluded as to the facts.

13. No.

14. Yes: he is entitled in all cases to the assistance of a counsel. When the accused party does not select counsel, one is appointed to him by the Court. Only one counsel can be heard in defence of the prisoner; but he may retain more. The advocates always act gratuitously when the accused is without means.

15. The accusing and accused party may have the required witnesses summoned. If they are in the island, the Court has full power to compel their attendance, and obtain any documentary evidence.

16. After the accusation has been read in Court by the Attorney General, an order is then made, authorizing the Attorney General to call witnesses on a future day. The evidence is taken down in writing in the presence of the prisoner and counsel, generally before the Court, composed of the bailiff and two jurats, and in some cases before the viscount or his deputy, when a witness is unable to attend Court through sickness, or is about to leave the island.

17. No witness is heard in his absence.

18. Immediately after the evidence for the prosecution has been heard, or even before, with the consent of the Court.

19. The party accused is allowed fully to cross-examine witnesses produced against him.

20. No fresh evidence for the prosecution can be produced after the jury is empannelled. But in a few cases the Court has allowed fresh evidence to be called in by the accused party, after the verdict of the first jury.

21. The whole is taken down in writing.

22. It is left in the custody of the clerk of the Court, to be referred to by the parties, and read before the jury. The evidence is reduced to writing in the presence of the prisoner, and each answer read as soon as written down, so that any error or omission can be pointed out by the prisoner or his counsel. Should, however, any error pass unperceived, the witness can be again called before the Court, provided the jury is not yet empannelled.

23. He may be heard on questions of law at any time during the proceedings, and has full power to examine witnesses.

24. The Attorney General is heard last. When the juries are empannelled, the *accusation* and evidence are read by the Attorney General, and the prisoner's counsel is heard in his defence, after which the Attorney General addresses the jury.

25. The Court decides questions of law; the juries decide the fact. The first jury is composed of the constable and twelve members of the police of the parish where the offence or the principal offence charged has been committed, unless the Court allow a jury to be called from another parish. If the majority return a verdict of Guilty, the prisoner may appeal to a *grande enquête*, or jury composed of twenty-four gentlemen (selected by the Attorney General from the three adjoining parishes), five of whom are sufficient to acquit.

26. By the Court on the conclusions of the Attorney General.

27. Yes; from day to day when the evidence is to be reduced in writing. After the jury has been empannelled, I know of no case where the trial has been suspended or put off, unless for an hour at most.

28. A general outline of the proceedings has been given in the preceding answers.

29. In cases that are disposed of summarily (or without the intervention of a jury) by the Court, composed of the bailiff and two jurats, neither party can appeal. In cases that go before a jury, the accused party may appeal from the first to the second jury, but not the Attorney General.

30. It is the duty of the viscount, or his deputy, to see it carried into effect. Time is allowed to a criminal condemned to death to sue for mercy.

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31. I beg to refer the Commission to the Clerk of the Court: the several forms of indictments or accusations, &c., are found in the records of the Court. The oaths taken by the witnesses and members of the Court, &c., are found in the "Code of Laws for the Island of Jersey, 1771."

32. The bailiff and Crown officers, viz., the Attorney General, Viscount and Advocate General, are appointed by letters patent.

The jurats are elected for life by the rate-payers of the island, and are amenable before Her Majesty in Council.

The Clerk of the Court and the two *dénonciateurs*, or under-sheriffs, are named by the bailiff.

The constables and centeniers are chosen for three years by the rate-payers of their several parishes.

The members of the police are chosen by the parish assemblies, viz., the vingteniers for three years, and the police officers in the town for four years, in the county for seven years.

These several functionaries are removable by the Royal Court.

33. Our system of criminal proceeding may on the whole offer ample guarantees to the accused; but several parts are open to objections.

1. To award punishment for the slightest offence, the presence of the following functionaries at least is required:—the bailiff, two jurats, the Attorney General, the viscount, the clerk of the Court, and the advocates; a more summary jurisdiction is much wanted.
2. The first jury is composed of the members of the police selected by the constable.
3. The jurors for the *grande enquête* are selected for each case by the Attorney General.
4. Taking down the evidence in writing is often a long and tedious process.
5. The evidence is received in the absence of the jury.

On the other hand, the jury is enabled to examine more carefully the whole of the evidence brought forward, by referring to the depositions when they have retired to form their verdict; and, as the evidence is not closed in one day, other witnesses, if it is necessary, may be summoned by the prosecutor or the accused, until the case is thoroughly investigated, so that neither party can be taken by surprise. These several advantages and disadvantages were under the consideration of a Committee of the States, named to revise the Criminal Law, when the Royal Commission was issued.

P. LE SUEUR, *Advocate.*

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No. 17.

James Godfray, Esq.

*Answers of James Godfray, Esq., Advocate of the Royal Court of Jersey, to the first Series of Questions.*

1. The opportunities I have had of becoming acquainted with the criminal law of Jersey are by having, as clerk in the Greffier's Office, registered the proceedings and sentences of the Royal Court from 1840 to 1843, and subsequently by having occasionally attended the meetings of the Court when criminal prosecutions have been carried on.

2. The Royal Court is the only tribunal in the island exercising criminal jurisdiction. Its jurisdiction has originated in the law of Normandy as it existed before our separation from that Duchy, and extends over all offences excepting in cases of high treason.

3. The original authorities relied upon in the discussion of questions arising upon the criminal law were the commentators Rouillé and Terrien; but, that law being but partially commented by them, the modern English and French authorities on criminal law are principally relied upon in most questions which call for a discussion.

4. The step first taken for the purpose of bringing to justice a party suspected of having committed an offence is his apprehension, which is effected by the constable or one of the centeniers of the parish in which the offence has been committed. This police officer immediately informs the bailiff, or one of the "*jurés justiciers*" (jurats), of the occurrence, and states the cause of suspicion. If the suspicion appears grounded, the bailiff or jurat gives the police officer permission to put the party suspected into custody provisionally; and it is the duty of the constable or centenier on the next court day to bring up the offender, and to give his report in writing, containing the information he may have received relative to the offence, into the hands of the Queen's Attorney General, who thereupon frames an accusation or charge against the offender.

5. The Court exercises summary jurisdiction in cases of petty offences, when the accused party admits the facts imputed to him, or when he submits to the judgment of the Court in order to avoid further prosecution.

6. Where there is no summary jurisdiction exercised by the Court, the preliminary steps which take place before the accused party is put upon his trial are as follows.

The Court being constituted of the bailiff and two jurats, and the offender being brought up before them by the constable, this officer's report, and the charge formed thereon, are read out by the Attorney General; the accused party is then called upon by the bailiff to put forth his plea, which is immediately taken down in writing by the greffier, or clerk of the Court. This plea or *déclaration*, as it is styled, together with the constable's or centenier's report, remains in the hands of the greffier, to be by him produced when necessary. In order to secure his appearance before Court, the accused party, if not admitted to bail, is, after each day's proceeding, at the request of the Attorney General, remanded to prison; and the Court gives the

Attorney General "*permission d'informer*," leave to call witnesses. The accused party is also allowed to bring forward such evidence as he may think proper for his defence.

If one day does not suffice for the hearing of evidence, the bailiff fixes some future day for that purpose, and so on until the case is ready to be submitted to the *enditement* or first jury.

7. The accused party is tried before the Royal Court in every case, either where there is or is not summary jurisdiction. In the first case, that is where there is summary jurisdiction, the Court may be constituted, as before, of the bailiff and two jurats only; and in the other case, that is where there is not summary jurisdiction, the Court must be constituted of the bailiff and at least seven jurats, that number forming a quorum. In the latter case, after all the preliminary steps have been taken, the Attorney General orders the constable, or in his absence the centenier of the parish in which the offence has been committed, to have twelve of his (the constable or centenier's) subordinate sworn police officers summoned to attend Court on the day appointed for the trial. These twelve officers, with the constable or centenier as their president, form what is termed the *enditement*, or first jury, by whom the accused party is tried. They are summoned by the vingtenier, according to a list made out by the constable or centenier. When the case has been heard by this jury, the bailiff having summed up the evidence, its members, taking with them all the minutes of the proceedings, retire to form their verdict; if it occurs that they are not unanimous in their opinion, and consequently no verdict is formed, when they return their President informs the Court thereof, whereupon the bailiff calls up all the members of such jury separately; and, in order that the Court only should know their various opinions, each member gives his secretly, of which the bailiff takes note, and returns the verdict accordingly. If the verdict returned is that of "*plutôt coupable qu'innocent*," that is, *rather guilty than innocent*, the accused party becomes, what is termed in the Acts of the Court, "*criminellement enditè*." Being thus indicted, if the accused party chooses to submit to the judgement of the Court, the Court immediately proceeds to pass sentence; if not, he has then the privilege of undergoing another trial by a second jury, called the "*grande enquête du pays*," which is summoned for that purpose generally in the course of the week. Should seven members of the first jury or *enditement* find the accused "*plutôt innocent que coupable*," *rather innocent than guilty*, he is immediately set at liberty. It sometimes occurs that the first jury is chosen from another parish than that in which the offence has been committed; but this is only an exception to the general rule.

The *grande enquête*, or second jury, is composed of twenty-four of the principal inhabitants, that is of those who pay the higher taxes, of three different parishes, viz. eight from the parish in which the offence has been committed, and eight from each of the two neighbouring parishes. These persons are chosen by the Attorney General, and summoned by the *prévôt* (summoning officer) of their respective parishes late in the evening preceding the day of their attendance. On the day of trial by *enditement*, or first jury, the accused party, immediately after the charge has been read, may challenge any member of this jury. He has the same right as regards the members of the *grande enquête*, or second jury; and, as in both cases more than the requisite number are summoned to attend, should the Court, always consisting of the bailiff and seven jurats at least, find the cause of challenge grounded, another person is immediately called up in the room of the member so displaced. When this second jury is complete, the usual oath is administered to them by the bailiff, and the trial takes its course. Should the members of this jury not be unanimous, their respective opinions are heard by the Court in the same manner as those of the first jury. Five out of the twenty-four members can acquit the prisoner. The bailiff or the jurat who has given the provisional permission to detain the accused is capable of acting as member of the Court.

8. The whole of the proceedings against the accused party are instituted and carried on by the Queen's Attorney General, who acts *ex officio*, and has the power of causing them to be abandoned at any stage previous to the accused party having been brought up before the *enditement*. This abandonment has no effect upon future accusations.

9. The charge against the party accused is put into a definite form in writing, as soon as the constable or centenier's report has been read to the Court. As to the substance of the charge, the accuser cannot afterwards change it; neither can he vary the form. The party accused may change his plea at any stage of the proceedings, and may otherwise improve his defence in such a manner as he or his counsel may think proper.

10. Where the party charged admits the facts alleged against him, but denies their relevancy to support the charge, the Court, consisting of the bailiff and two jurats, judges the question as to the relevancy; this being set aside, if the offence is of a trivial nature, the Court thus constituted proceed to pass sentence. If, on the contrary, the offence is of a serious nature, the full Court is convened for that purpose. Seven jurats at least must be present with the bailiff.

11. The Court orders that whosoever may have cognizance of the facts shall be summoned to attend Court, which is accordingly done; and the proceedings are carried on as is stated in answer to questions Nos. 6 and 7.

12. If the party charged confines himself to a denial of the relevancy of the charges, he is not thereby concluded as to the facts.

13. If the party charged confines himself to a denial of the facts, he is not thereby concluded as to the relevancy.

14. The party charged is entitled to the assistance of one or more counsel and other legal advisers. He makes the selection himself; and, where he is unable to defray the expense, they are always obliged to assist him gratuitously. One advocate only is allowed to address the Court and jury on his behalf. Should all the advocates (six in number) have refused to act for the accused party, upon his informing the Court thereof, the bailiff calls upon one of them, who is then bound to assist the accused.

15. The accusing party can, at any stage of the proceedings, previous to the trial by *endite-*

*ment*, produce evidence, both oral and documentary. In order to compel the production of oral evidence, the list of witnesses of each party is put into the hands of the *vicomte* or the *dénonciateur*, whose duties are to summon the witnesses at least 24 hours previous to the day on which their presence is necessary. If any witness fails to attend to this summons, the Court, so as to ensure his presence on a future day, orders the arrest of his person. The documentary evidence, which may be or may have been produced, is, together with the depositions of the witnesses, "*logées au greffe*," that is, deposited in the hands of the greffier, who produces them when required, and is obliged to give a copy thereof gratuitously to the accused party. The accused, besides having the same means as the accusing party of producing evidence, has the privilege of so doing after his trial by *enditement*, that is when he comes to trial by *grande enquête*.

16. The evidence is first received the next Court day appointed for that purpose after the charge has been drawn out by the Attorney General. The evidence is taken *vivâ voce* where the jurisdiction is of a summary kind. Where the jurisdiction is not of a summary kind, the whole evidence is taken in writing by attorneys named by the bailiff to that effect. It is in both cases taken in presence of the Court, the accusing and accused party.

17. The party accused is allowed to hear the evidence produced against him, when such evidence is first taken, as is stated in answer to question No. 16.

18. The accused party may produce evidence to meet the evidence produced against him immediately after the evidence for the prosecution has been heard.

19. The accused party is allowed to question the witnesses produced against him, after the Attorney General has questioned them. It is always optional to the accused party to put the last questions to the witnesses; and he may do so to any extent, as long as they are connected with the case.

20. Fresh evidence may be produced by the accused at any stage of the proceeding before the actual judgment; but the accuser is not allowed to produce evidence after the case is ready to be tried by the *enditement* or first jury.

21. The whole of the evidence, at every stage of the proceeding, is taken down in writing, excepting in cases where the Court exercises summary jurisdiction.

22. The evidence which is taken down in writing is afterwards read to the Court and the first jury. The accused party, if found guilty by the first jury, is allowed, when he comes to trial by the second jury, to produce evidence against that which may have been previously produced against him. As the evidence is taken down in writing by an attorney in presence of the bailiff, jurats and the parties concerned, the duty of the Court is to see that whatsoever the witnesses state be correctly taken down, and afterwards signed by them; it never occurs that this part of the proceedings is disputed; although I conceive that, if there was any informality in this respect, the accused party would be allowed to give proof to that effect.

23. The counsel of the party charged has the privilege of being heard on questions of fact or law, and examining witnesses at any stage of the proceedings.

24. The party accusing first reads the charge; then each day's proceedings according to date; after which counsel is heard for the accused, and lastly the Attorney General. Should he make use of new arguments, the accused may be heard in reply; but not otherwise.

25. When the case is not of sufficient gravity to be submitted to a jury, the bailiff and jurats decide both law and fact. In other cases they decide the law only; and the first and second jury, in their respective capacity, decide the fact.

26. Judgment is awarded by the bailiff, according to the opinion of the majority of the jurats.

27. The Court has the power to adjourn or suspend its proceedings at any stage. When the witnesses, who have been warned for a certain day, have all deposed, or when the Court sees that the whole of the evidence cannot be heard in that one day, the proceedings are adjourned. They are also adjourned in cases of illness, either of the accused party or his counsel, or for any other reasonable cause. The Court can suspend its proceedings for a short space of time only (not more than about an hour) when either the *enditement* or *grande enquête* are sitting; but in that case these bodies, having begun their respective duties, are not allowed to separate or have communication with any person until they have returned their verdict. They are, during this momentary suspension of the proceedings, as also when they retire to form their verdict, put under the immediate charge of the *vicomte* or sheriff.

28. Having detailed, as clearly as was in my power, the incidents to accusation and trial, I have nothing more to add in answer to this question, except that, when a witness is about to leave the island, the Court, on the demand of the accusing or accused party, authorises the *vicomte* to take down in writing the deposition of such witness, which he accordingly does in presence of both parties. The deposition so taken is signed by the witness, as also by the *vicomte*, who afterwards puts it into the hands of the party who has applied to the Court to have such deposition taken; and on the next Court day it is *logée au greffe* (deposited in the greffier's office), with the other written evidence to the same effect.

29. On questions of law which may have been moved before the bailiff and two jurats, the accused party has the power of appeal to the bailiff and the twelve jurats, seven of whom must be present with the bailiff to form a Court of Appeal. This appeal is brought on the day of trial by *enditement* previous to the fact being submitted to this jury. No further appeal is allowed as regards the law; but, as is before stated, the accused may appeal to, and be tried by, a *grande enquête*, whose decision is final. The Court, in passing sentence, always reserves the right to the party convicted of applying to Her Majesty for pardon. The accusing party has no right of appeal.

30. If judgment be finally against the accused party, he is sent back to prison, and the *vicomte* sees that it is carried into effect.

31. Herewith is a copy of a report drawn out by the centenier, who had apprehended the

parties therein mentioned, and presented to the Court by the constable of the parish, in which the offences had been committed, at the same time as he brought the offenders before the Court. (No. 1.)

Enclosed is also a copy of the charge formed by the Attorney General on the above mentioned *centenier's* report (No. 2), and the acts of the Court relating the proceedings of each day until final judgment. (Nos. 3, 4, 5, 6, 7, and 8.)

I have not thought it necessary to send forms of the oaths taken by the members of the Court, witnesses and others, the *greffier* having informed me that he had drawn them out for the purpose of forwarding them to the Commissioners.

32. The bailiff is appointed for life by the Sovereign. The jurats are elected by the tax-payers of the whole island, and officiate for the term of their natural life, or until such time as they obtain their discharge, on account of age or infirmity, by means of an Order by Her Majesty in Council.

The constables and *centeniers* are chosen by the tax-payers of their respective parishes, and perform the duties of their office for the space of three years.

The *officiers du connétable* and *vingteniers* (the constable and *centeniers'* subordinate officers) are chosen by the *principaux* (those who pay above a certain amount of taxes) and the police officers of each parish, who are convened from time to time for that purpose.

The *officiers du connétable* officiate in the parish of St. Helier four years, and in the other eleven parishes seven years. Though the law does not state for what space of time the *vingteniers* are to fill their office, it is the custom in all the parishes to proceed every three years to new elections.

33. The above answers contain, as near as possible, the information I can furnish respecting the criminal law of Jersey.

34. The defects which appear to me to exist in the present system are,—

1st. That a person on mere suspicion is kept in gaol sometimes a week at the pleasure of the police, previous to his being presented before Court.

2ndly. That the constable or the *centenier* who has apprehended the party suspected, and his subordinate police officers, who have generally assisted him in so doing, are called upon to form a jury to try the accused.

3rdly. That in cases of a serious nature the witnesses who have deposed, and whose depositions have been taken down in writing, are not afterwards called upon to appear at Court in presence of the juries.

In order to remove these defects, I beg leave at present to suggest,—

That the moment a party, suspected of having committed an offence, has been apprehended by the police, he and the witnesses to the fact should at that time be brought up before, and examined by, a magistrate appointed for that purpose; and, if this magistrate, after having heard the evidence, which he would be obliged to take or cause to be taken down in writing, should find the offence of a serious nature, and, consequently that there was cause to have the party suspected tried by jury, he would then issue an order to have him put into custody until such time as the Court and juries would meet for the purpose of trying criminal cases.

That the police could not have the power of detaining a party suspected more than 18 hours (Sunday excepted) before presenting him to this magistrate.

That in cases of trivial offences this magistrate would have the power to exercise summary jurisdiction.

That this magistrate could in no way form part of the Court or juries by whom the accused was to be afterwards tried.

That the jury composed of the police be abolished, and, if necessary, another substituted in lieu thereof.

And, as it is difficult for a jury, in some cases, to seize the exact meaning of the witnesses by the mere reading of their depositions, it would be proper,—

That the witnesses who had deposed before the magistrate be called up in presence of the jury or juries on the day or days of trial, to hear their depositions read, and be questioned thereon.

That the accused party would on those days be allowed to bring up fresh evidence, which might be favourable to his defence, as also evidence to meet that which had previously been brought up against him.

These few alterations, though they might not entirely eradicate the existing evils, would in some measure improve the present system.

JAMES GODFRAY.

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1.—*A Pierre Le Sueur, écuyer, Connétable de la Paroisse de St. Hélier.*

MONSIEUR,

Vendredi, le 19 Septembre, 1845, vers les six heures du matin, M^se^ Anne Pearce, veuve de M. Thomas Huxford, vint me porter plainte que, la nuit précédente, des voleurs avaient arraché un des volets et brisé un des carreaux de vitre de sa boutique, par où ils s'y étaient introduits et ensuite ouvert la porte extérieure, et qu'ils lui avaient volé environ dix douzaine d'œufs, douze bouteilles de *ginger beer*, plusieurs pains, deux morceaux de lard, deux paires de souliers, du fromage, environ neufs livres de réglisse et autres objets, qu'ils avaient tiré plusieurs tiroirs dans lesquels ils avaient fouillé, avaient brisé le haut d'un pupitre qui était fermé, endommagé un grand nombre d'objets, et laissé dans la boutique une chandelle allumée. Que les voleurs s'étaient également introduits dans la boutique occupée par M. Josué Noël, dans le même voisinage. Peu de temps après, je me rendis

JERSEY.

*Answers to Questions.*

SERIES I.

James Godfray, Esq.

chez la dite M^se. Huxford, et ensuite chez le dit sieur Noël, qui me dit que la nuit précédente des voleurs avaient déplacé un des volets de sa boutique, brisé un des carreaux de vitre par où ils s'y étaient introduits, et lui avaient volé un fromage, un pain, trois à quatre douzaines d'œufs, plusieurs boîtes de *lucifer matches*, trois livres de tabac et de la liqueur; et que des boîtes et *show glass*, que les voleurs avaient emportées et déposées dans les environs, lui avaient été rapportées de très grand matin par des personnes qui les avaient trouvées. Ayant observé comment les voleurs s'étaient introduits dans les dites boutiques, je soupçonnai Edouard Anquetil, Richard Joyles, avec leur camarade, d'être les auteurs des dites ruptures et vols. Jeudi, le 2 du courant, M. Philippe Nicolle, officier du connétable, m'informa qu'en conséquence des informations qu'il avait reçues, ayant lieu de croire que William Gillet avait aux pieds une des paires des souliers volés chez la dite M^se. Huxford, il l'avait interrogé, et qu'il disait les avoir achetées de Richard Joyles. M. Nicolle en ayant d'abord informé M. le Centenier Du Parcq, ils avaient été à la poursuite du dit Joyles, qui nia ces faits; mais qu'ayant été ensuite chez Betsey Jarvis, où les dits Richard Joyles, Edouard Anquetil, William Sampson et autres repris de justice logeaient, ils avaient fait des perquisitions, et y avaient trouvé une paire de souliers, qui avait été identifiée, ainsi que celle trouvée aux pieds du dit William Gillet, par la dite M^se. Huxford pour sa propriété, et comme faisant partie des objets volés dans la susdite occasion. En conséquence M. le Centenier Du Parcq avait detenu provisoirement les dits Richard Joyles, William Sampson et William Gillet dans les loges de l'Hôpital. Je fus accompagné du dit Sieur Nicolle aux logements de la dite Betsey Jarvis, qui venait de sortir pour se rendre à l'Hôpital. Edouard Anquetil, qui était dans une des mansardes, s'évada par la lucarne et pardessus les toits des autres maisons. Etant retourné à l'Hôpital, accompagné de M. le Centenier Du Parcq, et du dit officier de Police, Nicolle, j'y trouvai la dite Jarvis, et, en présence des dits Joyles, Sampson, et Gillet, elle me remit trois bâtons de réglisse, qu'elle nous dit provenir des dits vols; que, la nuit qu'ils avaient été commis, William Gillet, Richard Joyles et Edouard Anquetil étaient entrés chez elle vers une heure, et que Gillet portait un panier rempli d'œufs et deux paires de souliers; alors Gillet dit, " it is of no use; *I will tell the truth*," et fit l'aveu que, la nuit en question, lui, Gillet, Richard Joyles et Edouard Anquetil avaient été dans *Roseville street*, que Joyles avait forcé une barre en fer qui retenait les volets d'une boutique (celle du dit Sieur Noël), avait dérangé un de ces volets, et que, Anquetil ayant brisé un des carreaux de vitre, il s'était introduit dans la dite boutique, mais qu'ils n'y avaient rien volé de sa connaissance; qu'ensuite ils s'étaient rendus à la boutique de M^se. Huxford, où Joyles avait forcé le volet d'une des fenêtres, et que, Anquetil ayant brisé un des carreaux, il avait défait le bouton qui retenait la dite fenêtre, et qu'ensuite Anquetil et lui (Gillet) s'y étaient introduits, que Anquetil lui avait remis un panier rempli d'œufs et deux paires de souliers qu'il avait passées à Joyles, qui faisait guet en dehors; que lui et Anquetil étaient ensuite sortis, mais que Anquetil, qui avait bu de la liqueur, devint si ivre que Joyles fut obligé de le porter sur son dos chez la dite Betsey Jarvis, où lui (Gillet) avait porté les œufs et les souliers; qu'ils avaient couché Anquetil, et que, ayant fait part de ce qu'ils venaient de faire à William Sampson et à Mark Vickery, ces derniers s'offrirent de retourner avec eux; qu'en conséquence ils s'y étaient rendus ensemble; arrivés à la susdite fenêtre, Sampson s'y introduisit et avait ouvert la porte extérieure de la dite boutique; qu'alors lui Gillet, Richard Joyles et Mark Vickery y étaient entrés et y avaient pris du pain, de la morue, des bâtons de réglisse, une petite boîte en acajou et autres objets dont il ne se rappellait pas: Richard Joyles, qui était présent, dit que l'entier de ce que Gillet venait de rapporter était correct à l'exception d'un fait, que lui (Joyles) avait forcé une barre en fer qui retenait les volets de la boutique du dit Sieur Noël, et en avait dérangé un des volets. Joyles nia ce fait. En conséquence je sequestrai les dits trois bâtons de réglisse et les deux paires de souliers susmentionnés, et je saisis les dits William Gillet, Richard Joyles et William Sampson, que j'ai remis, avec la sanction d'Edouard Leonard Bisson, écuyer, Lieutenant Bailli, à la garde du geolier de la prison. J'ai fait tout mon possible pour parvenir à arrêter les dits Edouard Anquetil et Mark Vickery; mais n'ai pu y réussir.

De tout quoi je vous fais ce présent rapport.

(Signé) JOHN CHEVALIER, *Centenier.*

*St. Hélier, ce 4e Octobre*, 1845.

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Dans l'après midi de lundi, le 6e du courant, Messieurs Jean Alexandre et George Clement Le Feuvre, officiers du connétable, réussirent à arrêter le dit Edouard Anquetil, que je saisis et remis avec la sanction d'Edouard Leonard Bisson, écuyer, à la garde du géolier de la prison.

(Signé) JOHN CHEVALIER, *Centenier.*

*St. Hélier, ce 9e Octobre*, 1845.

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*A Edouard Léonard Bisson, écuyer, Lieutenant Bailli, et à Messieurs les Jurés Justiciers à la Cour Royale de l'île de Jersey.*

J'ai l'honneur de présenter le rapport ci-dessus, ainsi que les dits Joyles, Sampson, Gillet et Anquetil, et les effets séquestrés, à fin qu'il en soit ordonné.

(Signé) P. LE SUEUR, *Connétable de St. Hélier.*

*Délivré en Cour Séante, ce 11e Octobre*, 1845.

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*Du 11e Octobre*, 1845.

William Sampson, saisi de fait et présenté en justice sous l'accusation portée vers lui en conséquence du rapport du Centenier Chevalier de St. Hélier, a sur ce plaidé et fait sa déclaration, savoir: qu'il n'est pas coupable.

*Du 13e Novembre*, 1845.

Le dit William Sampson a déclaré persister dans sa déclaration précédente.

*Du 10e Décembre*, 1845.

Le dit William Sampson a déclaré persister dans sa déclaration précédente.

*Du* 11e *Décembre*, 1845.

Le dit William Sampson a déclaré persister dans sa déclaration précédente.

*Du* 15e *Décembre*, 1845.

Le dit William Sampson a déclaré persister dans sa déclaration précédente.

*Du* 18e *Décembre*, 1845.

William Sampson a persisté dans sa déclaration précédente.

*Du* 11e *Octobre*, 1845.

Edouard Anquetil, saisi de fait et présenté en justice sous l'accusation portée vers lui en conséquence du rapport du Centenier Chevalier de St. Hélier, a sur ce plaidé et fait sa déclaration, savoir : qu'il n'est pas coupable.

*Du* 13e *Novembre*, 1845.

Le dit Edouard Anquetil a déclaré persister dans sa declaration précédente.

*Du* 10e *Décembre*, 1845.

Le dit Edouard Anquetil a déclaré persister dans sa déclaration précédente.

*Du* 11e *Décembre*, 1845.

Le dit Edouard Anquetil a persisté dans sa déclaration précédente.

*Du* 15e *Décembre*, 1845.

Le dit Edouard Anquetil a déclaré persister dans sa déclaration précédente.

*Du* 18e *Décembre*, 1845.

Edouard Anquetil a persisté dans sa déclaration précédente.

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2.—*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le onzième jour d'Octobre. William Gillet, Richard Joyles, William Sampson et Edouard Anquetil, saisis de fait par le Centenier Chevalier de la paroisse de St. Helier, et présentés en justice par le connétable de la dite paroisse, ont été accusés par le Procureur Général de la Reine, en conséquence du rapport du dit centenier, d'avoir dans la nuit de Jeudi, 18e, à vendredi, 19e jour de Septembre, 1845, ou vers ce tems là, rompu la boutique occupée par Mse. Anne Pearce, située proche le Hâvre des Pas, en la paroisse de St. Hélier, de s'être ensuite introduits dans la dite boutique, et d'en avoir volé une quantité d'objets appartenant à la dite Pearce, entr'autres: "Dix douzaines d'œufs ou environ, douze bouteilles de *ginger beer*, une petite boîte en acajou, plusieurs pains, deux paires de souliers, du fromage, de la morue, du lard, et du réglisse." Item, de s'être, la même nuit de Jeudi 18 à vendredi 19 Septembre, 1845, ou vers ce tems là, introduits, aussi avec effraction, dans une autre boutique occupée par M. Josué Noël, située dans *Roseville street*, en la ville de St. Hélier, et d'en avoir volé une quantité d'objets, entr'autres, un fromage, un pain, environ trois douzaines d'œufs, plusieurs boîtes de *lucifer matches*, environ trois livres de tabac, de la liqueur, plusieurs boîtes, et un *show glass*, le tout la propriété du dit Josué Noël, ou d'avoir aidé, assisté, ou participé, aux dites ruptures et aux dits vols, ou d'avoir reçu, caché ou recelé les dits objets volés, sachant qu'ils provenaient de vols. Les dits William Gillet et Richard Joyles s'étant avoués coupables de l'accusation portée contr'eux, et ayant offert d'être témoins pour la Reine, ils ont été envoyés en prison pour être reproduits et recevoir sentence, dans le cas où leur offre ne serait point accueillie. Et les dits William Sampson et Edouard Anquetil ont plaidé à la dite accusation et fait leurs déclarations, qui ont été rédigées et logées au greffe, et ils ont été constitués prisonniers sous les dites accusations, à l'instance du dit Sieur Procureur Général de la Reine, auquel il est permis d'informer. Etant le rapport du dit centenier, ainsi que les effets par lui sequestrés et produits en Cour, demeurés logés au greffe.

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3.—*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le treizième jour de Novembre. William Sampson et Edouard Anquetil, convenus en justice par le Procureur Général de la Reine, pour ouïr dépôt d'informateurs sur l'accusation qui leur est faite, en conséquence du rapport du Centenier Chevalier de la paroisse de St. Hélier; le tout selon que plus au long est contenu au dit rapport et en l'acte de la Cour, daté l'an 1845, le 11e jour d'Octobre. M. Jean Chevalier, M^se^ Anne Pearce, M. Josué Noël, M^se^ Betsey Jarvis, M^se^ Anne Stone, M^se^ Elizabeth Mann, à la cause à informer, et ouïr record d'officier. Les dits témoins ont déposé par serment; et leurs dépositions ont été rédigées et logées au greffe. Les dits accusés ont été renvoyés en prison; et il a été permis au dit Sieur Procureur Général de la Reine d'informer plus outre.

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4.—*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le dixième jour de Décembre. William Sampson et Edward Anquetil, convenus à l'instance du Procureur Général de la Reine, pour ouïr dépôt d'informateurs sur l'accusation qui leur est faite en conséquence du rapport du Centenier Chevalier de la paroisse de St. Hélier; le tout selon que plus au long est contenu au dit rapport et en l'acte de la Cour, daté l'an 1845, le 11 jour d'Octobre. M^se^ Bessey Jarvis, à la cause à récoler son témoignage, Monsieur Richard

Du Parcq, Monsieur Philippe Nicolle, à la cause à informer, et ouïr record d'officier. Les dits témoins ont déposé par serment, et leurs dépositions ont été rédigées et logées au Greffe. Les dits accusés ont été renvoyés en prison, et il a été permis au dit Sieur Procureur Général de la Reine d'informer plus outre.

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5.—*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le onzième jour de Décembre. William Sampson et Edouard Anquetil, convenus à l'instance du Procureur Général de la Reine, pour ouïr dépôt d'informateurs sur l'accusation qui leur est faite, en conséquence du rapport du Centenier Chevalier de la paroisse de St. Hélier; le tout selon que plus au long est contenu au dit rapport et en l'acte de la Cour, daté l'an 1845, le 11 Octobre. Le Procureur Général de la Reine ayant informé la Cour qu'il croit qu'il est utile dans l'intérêt de la justice que Richard Joyles soit admis, selon sa demande, témoin pour la Reine, la Cour a jugé que le dit Richard Joyles sera entendu comme témoin. Ensuite de quoi la cause est remise à Lundi prochain; partant, les dits accusés et le dit Joyles sont renvoyés en prison; et il est commandé aux témoins appellés à écoler d'y garder leur jour.

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6.—*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le quinzième jour de Décembre, William Sampson et Edouard Anquetil, convenus en justice par le Procureur Général de la Reine, pour ouïr dépôt d'informateurs sur l'accusation qui leur est faite, en conséquence du rapport du Centenier Chevalier de la paroisse de St. Hélier; le tout selon que plus au long est contenu au dit rapport et en l'acte de la Cour du 11me jour d'Octobre, 1845. M^se^ Elizabeth Mann, à la cause à récoler son témoignage; Richard Joyles, lequel par acte de la Cour, daté l'an 1845, le 11 jour de Décembre, fut reçu à sa demande d'être entendu comme témoin pour la Reine; et Mr. Henry Tandrell, à la cause à informer, et ouïr record d'officier. Les dits témoins ont déposé par serment; et leurs dépositions ont été rédigées et logées au Greffe. Les dits accusés ont été renvoyés en prison; et il a été permis au dit Sieur Procureur Général de la Reine d'informer plus outre.

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7.—*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le dix-huitième jour de Décembre. William Sampson et Edouard Anquetil sous accusation d'avoir de complicité avec William Gillet et Richard Joyles, dans la nuit de Jeudi 18 à Vendredi 19 jour de Septembre, 1845, ou vers ce tems là, rompu la boutique occupée par Mse. Anne Pearce, située proche le Havre des Pas, en la paroisse de St. Hélier, de s'être ensuite introduits dans la dite boutique, et d'en avoir volé une quantité d'objets appartenant à la dite Pearce, entr'autres, dix douzaines d'œufs, ou environ, douze bouteilles de *ginger beer*, une petite boîte en acajou, plusieurs pains, deux paires de souliers, du fromage, de la morue, du lard, et du réglisse. Item, de s'être la même nuit de Jeudi 18 à Vendredi 19 Septembre, 1845, ou vers ce tems là, introduits, aussi avec effraction, dans une autre boutique occupée par Monsieur José Noël, situtée dans Roseville street, en la ville de St. Hélier, et d'en avoir volé une quantité d'objets, entr'autres un fromage, un pain, environ trois douzaines d'œufs, plusieurs boîtes de *lucifer matches*, environ trois livres de tabac, de la liqueur, plusieurs boîtes, et un *show glass*, le tout la propriété du dit Josué Noël, ou d'avoir aidé, assisté, ou participé aux dites ruptures et aux dits vols, ou d'avoir reçu, caché ou recelé les dits objets volés, sachant qu'ils provenaient de vols, le tout selon que plus au long est contenu au rapport du Centenier Chevalier de la paroisse de St. Hélier et en l'acte de la Cour, daté l'an 1845, le 11 jour d'Octobre, convenus à l'instance du Procureur Général de la Reine, pour ouïr le rapport des hommes de l'Enditement de la Paroisse de St. Hélier sur la dite accusation: Pierre Le Sueur, écuyer, Connétable, Messrs. George Le Cronier, Henry Mahy, Philippe Fauvel, jun., Jean Binet, jun., Jean Alexandre, Jean Le Cras, Philippe Sorel, George Coutanche, George Clement Le Feuvre, Thomas Monnamy, Edouard Gallichan, George Picot, actionnés par le Procuréur Général de la Reine, pour passer comme hommes d'enditement à la charge ou décharge des dits William Sampson et Edouard Anquetil sur la dite accusation. L'accusation a été lue aux dits prisonniers; et ils ont sur ce plaidé et fait leurs déclarations, qui ont été rédigées et logées au greffe. Lecture a été donnée des dépositions des témoins ci-devant rédigées et logées au greffe, et des autres pièces de la procédure. Les accusés ont été entendus en leurs défense par le moyen de leur avocat; et le dit Sieur Procureur Général de la Reine a été ouï. Les hommes de l'enditement se sont retirés avec toutes les pièces de la procédure, pour conférer dans le particulier, et, étant de retour et à un accord, ils ont fait leur rapport à la justice, par le moyen du dit Connétable, qu'ils croient en leurs consciences que le dit William Sampson est plutôt innocent que coupable de la rupture et du vol commis chez le dit Josué Noël, et les deux accusés plutôt coupables qu'innocents des autres chefs de l'accusation. Partant ils demeurent endités criminellement; et ils ont été renvoyés en prison jusqu' à ce que le dit Sieur Procureur Général de la Reine fasse convenir la Grande Enquête du Pays dont ils ont demandé le bénéfice.

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8.—*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le vingt-quatrième jour de Décembre, William Sampson et Edouard Anquetil, lesquels avaient été accusés d'avoir (de complicité avec William Gillet et Richard Joyles), dans la nuit de Jeudi 18 à Vendredi 19 jour de Septembre, 1845, ou vers ce tems-là, rompu la boutique occupée par Mse. Anne Pearce, située proche le Havre des Pas, en la paroisse de St. Hélier, de s'être ensuite introduits dans la dite boutique et d'en avoir volé une quantité d'objets appartenant à la dite Pearce, entr'autres dix douzaines d'œufs, ou environ, douze bouteilles de *ginger beer*, une petite boîte en acajou, plusieurs pains, deux paires de souliers, du fromage, de la morue, du lard, et de la réglisse. Item, de s'être la même nuit de Jeudi 18 à Vendredi 19 Septembre, 1845, ou vers ce tems-là, introduits, aussi avec effraction, dans une autre boutique, occupée par M. Josué Noël, située dans *Roseville street*, en la ville de St. Hélier, et d'en avoir volé une quantité d'objets, entr'autres un fromage, un pain, environ trois douzaines d'œufs, plusieurs boîtes de *lucifer matches*, environ trois

livres de tabac, de la liqueur, plusieurs boîtes, et un *show glass*, le tout la propriété du dit Josué Noël, ou d'avoir aidé, assisté ou participé aux dites ruptures et aux dits vols, ou d'avoir reçu, caché ou recelé les dits objets volés, sachant qu'ils provenaient de vols; le tout selon que plus au long est contenu au rapport du Centenier Chevalier de la paroisse de St. Hélier, et en l'acte de la Cour, daté l'an 1845, le 11e jour d'Octobre; et lesquels William Sampson et Edouard Anquetil ont été trouvés par l'enditement de la paroisse de St. Hélier, savoir; le dit William Sampson plutôt innocent que coupable de la rupture et du vol commis chez le dit Josué Noël, et les deux accusés plutôt coupables qu'innocens des autres chefs de l'accusation, comme paraît par acte de la Cour, daté l'an 1845, le 18e jour de Décembre, convenus à l'instance du Procureur Général de la Reine, pour ouïr le rapport des Hommes de la Grande Enquête du Pays, dont ils ont demandé le bénéfice, et voir ensuite ordonner par justice sur la dite accusation:

*De la Paroisse de St. Helier.*

François Bertram, écuyer.
François Bertram, gent., fils Elie.
Daniel Messervy, gent.
Charles La Cloche Ricard, gent.
Jean Aubin, jun., écuyer.
Monsieur Charles William Quesnel.
Monsieur Jean Blampied.
Philippe Helleur, écuyer.

*De la Paroisse de St. Sauveur.*

Daniel Le Geyt, gent.
Edouard Le Cornu, jun., écuyer.
Philippe Vivian, gent.
Abraham Aubin, jun., écuyer.
Thomas Payn, écuyer.
Monsieur George Collas.
James Norman, jun., écuyer.
Monsieur George Buesnel.

*De la Paroisse de St. Laurens.*

Moses Gibaut, écuyer.
Philippe Le Feuvre, écuyer.
Monsieur Noé Arthur.
Monsieur George Frédéric Dupré.
Philippe Charles Patriarche, gent.
Jean Morel, gent.
Monsieur Philippe Bichard.
Edouard Le Maistre, jun., gent.

actionnés par le dit Sieur Procureur Général de la Reine, pour passer comme Hommes de la Grande Enquête du Pays à la charge ou décharge des dits William Sampson et Edouard Anquetil sur la dite accusation. Les hommes de la Grande Enquête ont été assermentés, comme en tel cas est requis et accoutumé. L'accusation a été lue aux dits prisonniers, et ils ont sur ce plaidé et fait leurs déclarations, qui ont été rédigées et logées au greffe. Lecture a été donnée des dépositions des témoins ci-devant rédigées et logées au greffe et des autres pièces de la procédure. Les prisonniers ont été entendus en leur défense par le moyen de leur avocat, et le dit Sieur Procureur Général de la Reine a été ouï. Les hommes de la Grande Enquête se sont retirés, avec toutes les pièces de la procédure, pour conférer dans le particulier, et, étant de retour et à un accord, ils ont fait leur rapport à la justice par le moyen du dit François Bertram, écuyer, qu'ils croient en leurs consciences que les deux prisonniers à la barre sont plutôt coupables qu'innocents des crimes dont ils étaient endités. Partant ils en demeurent dûment atteints et convaincus. Ensuite, après que les dits prisonniers, ainsi que le dit William Gillet, lequel le 11e Octobre dernier se déclara coupable de l'accusation, comme paraît par acte du dit jour, ont été entendus en mitigation par le moyen de leurs avocats, la Cour, conformément aux conclusions du dit Sieur Procureur Général de la Reine, et considérant leur état de récidive, les a condamnés pour punition de leurs crimes à être déportés à tel lieu qu'il plaira à Sa Très Excellente Majesté en Conseil d'ordonner, pour le terme de sept années. Tous leurs biens, meubles et héritages, s'ils en ont, demeurent acquis et confisqués à Sa Majesté ou au Seigneur auquel il appartient. Et ils sont renvoyés en prison jusqu'à ce que le bon plaisir de Sa Majesté soit connu touchant la dite déportation, au quel effet le greffier est chargé de transmettre copie authentique du présent acte au Clerk en attendance du Conseil Privé de Sa Majesté.

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*Answer of Robert Pipon Marett, Esq., Advocate of the Royal Court of Jersey, to the First Series of Questions.*

Robert Pipon Marett, Esq.
4 August, 1846.

In compliance with the request contained in your secretary's letter of the 4th of July, I have the honour of forwarding for your consideration the following paper, which embodies a reply to the series of questions concerning the Criminal Laws of Jersey, which accompanied that communication. As you will perceive, I have taken the liberty of so far departing from the strict tenour of your instructions in respect to those questions, that, instead of answering them categorically in the order in which they are laid down, I have given the information they were intended to elicit, in the form of a dissertation. My object, in adopting such a course, was principally to avoid repetitions; besides which I considered that, allowing of more method than the other, it would enable me to give a more accurate, connected and comprehensive view of our system of administration in criminal matters, and therefore the better to fulfil the design of your inquiries.

I shall premise by stating in reply to the first question that I was appointed an Advocate of the Royal Court of Jersey, in November, 1840, by the present Bailli, Sir John de Veulle, and began practising about the middle of the year 1842. (1)

In treating of the administration of Criminal Law in Jersey, it will be most convenient to divide the subject into two principal parts. In the first, I shall give an account of the functionaries to whom that administration is entrusted, their powers, duties and the manner of their appointment: in the second, I shall detail the mode in which it is conducted.

PART 1.—*Of the Persons who administer the Law in Criminal Matters.*

The Functionaries, to whom appertains the administration of the Criminal Laws, may be distributed into two classes; viz.:

JERSEY.

*Answers to Questions.*

SERIES I.

Robert Pipon Marett, Esq. 4 August, 1846.

I. Those who, after an act reputed criminal has been committed, are called upon to decide on its nature and the degree of culpability which belongs to it, and on the kind and amount of punishment to be inflicted on the offender; in other words, the Judicial Body.

II. Those whose duty it is to prevent the commission of such acts reputed criminal, to take measures after their perpetration for bringing those concerned in them to be judged by the proper Tribunal, and afterwards to carry the sentence of such Tribunal into execution; otherwise the Executive Body.

*The Judicial Body.*—To speak with exactness, there exist *two* Courts possessing Criminal jurisdiction in Jersey; the Ecclesiastical Court, and the Royal or Civil Court. The former of these owes its origin to James I., who, in 1623, granted to the Insular Clergy a body of (2) "*Canons Ecclesiastical*," by which he empowered the Dean, as judge, together with the other Rectors of parishes, as assessors, to take cognizance of a variety of offences, which will be found enumerated in the 22nd Canon, and to punish and censure them according to the laws of the Church. For many years after its institution, these powers were vigorously exercised: but of late, owing to several causes, the Court has seldom displayed its authority, and the repression of every kind of crime and delinquency has been almost entirely left to the secular arm. And indeed it would be better, perhaps, both for the clergy themselves and the community at large, if the right of deciding on such matters, which it has thus virtually abandoned, were taken altogether from the Ecclesiastical Court, and its functions confined to administering the oath of office to the churchwardens, alms-collectors and other ecclesiastical officers, rectifying errors in the parish registers, and other similar cases which, from their nature, fall more particularly within its province. For its warmest supporters must allow that, whenever it has attempted to enforce its authority in modern times, its members have been assailed with accusations of bigotry and intolerance, and exposed to severe criticisms and angry recriminations, which, however (2) unmerited, could not otherwise but excite prejudices against them in the minds of many, and seriously diminish their influence as ministers of the Gospel. Moreover, it would certainly contribute much to the uniformity and simplicity of our criminal system, if the task of carrying it out, in all its details, were confided to one Court alone.

Such an arrangement would be so much the more expedient and feasible, that it may be (2) said to exist already in practice, the Royal Court being, *de facto*, the only criminal tribunal in the Island.

This Court consists of the *Bailli* and jurats. The *Bailli* was anciently appointed by the Governor: but since the reign of Henry VII., or more properly of James I., who renewed and enforced the order of the former King, he is of royal nomination, and held his office for life until the time of the present *bailli*, who enjoys it only *durante bene placito*. He receives a salary of 300*l*. per annum, out of the revenues belonging to Her Majesty in the Island, and is entitled besides to various official fees which together make this place one of considerable emolument. He is, *ex officio*, president of the Royal Court on all occasions, and under whatever denomination it may act, as well as of the insular "States:" but by a singular anomaly, he cannot, in either capacity, give his opinion on any subject, concurrently with his colleagues, except when a decisory or casting vote is required. He has the privilege of naming one or more lieutenants to replace him, both at the Court and in the States, whenever by sickness or any other cause he is prevented from attending: and it would appear, from the practice of the last 50 or 60 years, that he is not restricted in his choice to any of the members of the Court in particular, though it was anciently held that the jurats alone were eligible. The "*greffier*," or clerk of the Court, the "commis au greffe," or deputy clerk, the two "*dénonciateurs*" or sheriff's officers, the six advocates, and the "*huissier*," or usher, are all appointed by him, as well as the "*écrivains*," or attorneys, whose number he may increase at his pleasure He possesses the power of punishing, by fine and temporary suspension from their offices, any members of the Court, not excepting the jurats, who may be guilty of disrespect towards him in (32) his official character, or of disobedience to his legitimate commands, and may even dismiss the advocates and attorneys, if the offence be repeated. The preservation of order and decorum during the sittings of the Court is peculiarly his province: and for this purpose he is invested with a right of summary jurisdiction, and may sentence the delinquents to be fined, or imprisoned for a short period, without the intervention of his fellow magistrates. His writ or order is necessary for the holding of coroner's inquests. No theatrical performance or public exhibition of any kind can take place without his permission; and no foreigner can exercise any trade or calling in the island, or dispose of goods and merchandize there, whether by wholesale, in retail, or by public auction, without first obtaining his license. He is also, by virtue of his office, a member of the board intrusted with the management of the public prison and house of correction.

The jurats, or, to use their official designation, the "*Jurés Justiciers*," twelve in number, are elected by the suffrages of the rate-payers throughout the Island, of which they must be natives. They hold their post for life, and can resign it only with the permission of Her Majesty in Council. If found guilty of gross misconduct, they may be dismissed by the same authority. (3) The creation of this order of magistrates is due to King John, who, to reward the islanders for their faithful adherence to his fortunes, amid the general defection of his other Norman subjects, bestowed on them a body of "Constitutions," in which the mode of nominating the jurats is laid down, and their powers are defined.

(2) The Royal Court, so composed, has the cognizance of all cases, civil, mixed and criminal, arising within the island, except high treason, disputes arising between the governor and the

major part of the jurats*, and the ecclesiastical matters before alluded to. This extensive jurisdiction was first conferred upon it by King John, as appears by the fifth article of the Constitutions of that prince, above mentioned, has been acknowledged by all the succeeding sovereigns of England, and was specially confirmed by the charter granted to the islanders, in the fourth year of the reign of Queen Elizabeth. In civil cases, when the matter in dispute, being personal property, is of or above the value of £80 sterling, or produces, if it partake of the nature of the reality, a revenue of five livres per annum or more, an appeal lies to Her Majesty in Council: but the decision of the Court is final in all questions of a purely criminal nature. The same rule formerly prevailed in respect to mixed cases also; but there seems to be a tendency at present to favour a different practice. From the tenor, however, of its records in general, and of some orders in council in particular on this subject, I am disposed to be of opinion that the Jersey Court can claim the right of judging all matters, in which the criminal element enters, without appeal. (2)

Such being the number and variety of the causes submitted to its jurisdiction, the Court has found it necessary, for the sake of order and expedition, to divide them into classes, for the treatment of which particular days are assigned. On these occasions, it takes different denominations according to the nature of the matters on which it is engaged. Thus, on those days (generally Thursdays) which it devotes to the hearing of questions relative to real property, it is styled "*la Cour d'Héritage.*" Under the name of "*Cour de Catel*" it takes cognizance of suits concerning *Chattels* or personal property, or rather, I should say, did so; for this Court, for which Tuesdays during term were formerly reserved, may now be said to exist in name only, being entirely superseded by the Courts of "*Billet*" and "*Samedi,*" which were originally created to relieve it from the pressure of business with which it was overburdened. The former of these is held on Fridays, and is used for the recovery of debts, bonds and arrears of rents, a kind of transferable mortgages peculiar, I believe, to the Channel Islands. As to the "*Cour de Samedi,*" which derives its name from the day on which it chiefly (but not exclusively) sits, it is a sort of subsidiary Court, at which are instituted a mixed multitude of actions, which are not considered to belong to the jurisdiction of the Courts already mentioned, and, among others, criminal prosecutions, which are all, without distinction, commenced there. With regard however to such as are finally brought before a jury, though all the preliminary proceedings are carried on before the Saturday's Court, the trial itself invariably takes place in presence of the "Full Court." (2) (7) (16)

It is proper to explain what is meant by the Full Court. It is not customary for the whole body of the jurats to attend at thesittings of the Courts above described: but the task of hearing suits, in the first instance, is committed to what is called the *Inferior Number*, which, at the Courts of "*Héritage*" and "*Catel,*" consists of three, and, at those of "*Billet*" and "*Samedi,*" of two, jurats, together with the Bailli: and its decision is binding, in personal actions, when the subject of the contest falls below the value of five pounds sterling. But, when it exceeds this sum, in worth, and in all real actions, the parties concerned, if dissatisfied with the judgment, are at liberty to have it re-examined by the "*Corps de la Cour,*" or Full Court, on which occasion seven at least of the jurats, with the Bailli, must be present. In every instance, without exception, the magistrates forming the "*Nombre inférieur,*" whose decision is called in question, are permitted to act as members of the Full Court. (7)

The terms during which the Jersey Court is open for the transaction of business are two in number. The first, or April, term begins on the Saturday immediately following the 11th of April, and continues to the fifth of July. The second, or September, term commences on the first Saturday after the 11th of that month, and terminates on the 5th of December. In former times, the prosecution of all criminal matters was limited to these periods: but, since 1834, this rule has been relaxed in favour of such accused persons as are suffering imprisonment, whose trials may now be proceeded with, at all times, without interruption or delay. Admiralty causes, and a few others requiring expedition, and which belong exclusively to the jurisdiction of the Saturday's Court, are also allowed to be brought on during the vacation.

I shall only just mention in this place, as being comprised in the judicial body, the juries employed in criminal trials, of which there are two, the *enditement* or preliminary jury, and the *grande enquête* or jury of appeal. Their composition and functions will be better described when I come to speak of the criminal procedure.

*The Executive Body.*—The functionaries included under this head are the "*Procureur Général de la Reine*" or Attorney General, the "*Avocat Général de la Reine*" or Solicitor General, the *Vicomte* or High Sheriff, the two *Dénonciateurs* or sheriff's officers, the parochial police, and the *Prévôt*.

The *Procureur Général* stands at the head of this department. He is, *ex officio*, public prosecutor; and every suit involving the application of a penal law must be instituted through him, and with his approbation. So extensive are his powers in this respect that, not only may he file an information against any person of his own authority, but, even after the accused is before the Court, and though the accusation may have been pleaded to and sent to proof, in short, at any time before either the verdict of the jury or the final judgment of the Court has been given on the matter at issue, he is at liberty to abandon the prosecution. On this, the party who was its object is immediately set free, and cannot again be brought to trial on the (32) (8)

* Such at least is the construction which the Court seems, from the earliest times, to have put upon the latter part of the fifth article of King John's Constitution, which is as follows. "Exceptis casibus nimis arduis, et si quis legitimè convictus fuerit a fidelitate Domini Regis tanquam proditor recessisse, vel manus injecisse violentas in Ministros Domini Regis modo debito officium exercendo." Nothing can well be more vague than these expressions; and Queen Elizabeth's Charter is not more explicit. Perhaps for *et si* we should read *ut si*, thus rendering the latter branch of the sentence the explanation of the former.

same charge. The presence of the *Procureur* is requisite for the holding of Coroner's Inquests; and on these occasions he may call any number of witnesses, and continue their examination from day to day as long as he considers necessary. To him also belongs the privilege of choosing the members of the *grande enquête*. This office is of great antiquity: in Jersey indeed, in all probability, it is coeval with the occupation of the island by the Normans. It was anciently in the gift of the Governors; but this privilege was finally taken from them by James I.; since which time the *Procureur* is nominated by the Crown. Though generally, he is not necessarily, a native, nor even a member of the Court. His salary is 100*l.* per annum, which are paid out (32) of Her Majesty's Revenues in the Island; in addition to which he receives, out of the proceeds of (8) the license tax, a sum proportioned to the number of licenses, which may amount to 40*l.* or (8) 50*l.* yearly, and is entitled to certain fees, which may, one year with the other, raise his official income to somewhat more than 200*l.* To compensate in some measure for the insufficiency of this remuneration, he is allowed to practise, as barrister, in all cases in which the interests of Her Majesty or the public are not concerned. His duties being very laborious, he is permitted to appoint, as assistant, a kind of secretary, called the "Autorisé du Procureur Général," who receives out of the revenues of the Crown an annual sum of 12*l.*; a most inadequate recompense, (32) when the ~~responsibility~~ attached to the situation is taken into account.

*The Avocat Général—*

Is the *substitute* of the *Procureur*, and acts in his stead, whenever, from indisposition or any other cause, he is unable to attend to his duty. In the presence of the *Procureur*, however, all his authority ceases. He is then nothing more than the adviser of that functionary, not (32) having even the faculty of addressing the Court after him on any public subject. The case is otherwise, of course, when he is engaged as advocate in a private suit. Like his colleague, he is appointed by the Crown. His annual salary is 50*l.*, wholly drawn from the Royal Revenues. I may add that both these officers, in their official characters, are entitled to a seat in the assembly of the insular "States," and may take part in the discussion of any measure, but are not admitted to vote.

*The Vicomte—*

(32) This officer takes precedence of the *Avocat Général*, though, from the similarity, indeed identity, of their functions, I have preferred mentioning the latter immediately after the *Procureur*. His duties are numerous and important: but I shall confine myself solely to the enumeration of such as are connected with the administration of criminal justice. In the first (32) place, he presides at inquests, in the capacity of coroner. He summons all witnesses in criminal trials, as well on behalf of the accused as of the Crown. He has the charge and superintendence of all persons incarcerated for crime, conveys them to and from the Court and prison (30) during their trial, and after their conviction takes the necessary measures for putting the sentence of the Court into execution. When the Court, on the information of the *Procureur* that a misdemeanor or a minor offence has been committed, issues an order for the seizure (*saisie*) of the delinquent, or his appearance to answer the complaint against him, the *vicomte* is one of the officers commissioned to carry it into effect. It is his peculiar business to inspect and legalize, by his stamp or seal, all weights and measures used in the island, and to discover and denounce all infractions of the regulations relating thereto. He may also arrest and bring up for punishment any person guilty of resisting or molesting him in the legal exercise of his office, or committing a breach of the peace in his presence. The origin of this office extends to a very remote period. It is supposed to be the same which is mentioned in the Constitutions of King John, under the name of "*Propositus*," and was then bestowed by popular election: but, if this surmise be true, the people have long since lost that right; and the *vicomte*, once the nominee of the governor, has held for nearly two centuries and a half, and now holds, his employment by Royal patent. More favoured, in this respect, than the *Procureur* and the *Avocat*, he enjoys the advantage of performing his duties by deputy: but it has been decided that, in availing himself of that privilege, he cannot reserve any portion of his authority or act simultaneously with his delegate. He receives from the Crown a yearly salary of 100*l.*; and his official fees are considerable.

*The Dénonciateurs—*

(32) There was anciently but one *dénonciateur;* and to this day one only, the senior of the two, is paid by the Crown. The sum he receives is extremely trifling. The second place was created, soon after the Restoration of Charles II., by Sir George de Carteret, then governor and bailli of the island, to reward one of his adherents, who had experienced heavy losses and encountered many dangers in the service of that King. Since that period its existence has been recognized by several orders in council. These functionaries are styled *officiers de justice*, or officers of the Court; and their duty (as part of the criminal establishment) is to escort the *vicomte* in seizing offenders or citing them to appear, in obedience to its orders. They may also arrest for a breach of the peace committed in their view.

*The Parochial Police—*

Is composed of four grades or orders of officers, "*Connétables*," "*Centeniers*," "*Vingteniers*" and "*Officiers du Connétable*."

Of the *connétables*, there is but one for each parish, who is not only at the head of its police but also its municipal chief, and representative in the States, and is elected by the contributors to the parochial or poor rate. His office is triennial, at the expiration of which term he is re-eligible. His powers as police officer are very considerable. Of his own knowledge, or on the information of others (which is not required to be upon oath), that a crime or other infraction of the law has been perpetrated, he may, without warrant, proceed to seek out and arrest

the offender, and may keep him in his own custody or that of his subordinates until he can be brought before the Court. As this method, however, would occasion much inconvenience, the most general mode is to place the prisoner in charge of the gaoler, for which purpose the permission of the bailli or one of the jurats is necessary. He is also empowered to enter and search any house suspected to contain stolen property, or any arms or instruments which may have been employed in the commission of the crime, and to sequestrate all such articles. On presenting his prisoner, he must deliver to the *procureur*, to be read to the Court, a report giving a full account of the circumstances which led to the arrest, and of his proceedings in the matter, and produce whatever effects he may have seized, which, from that moment, remain under the care of the *greffier*, or clerk of the Court, until the close of the trial. (32)

The *centeniers* are elected in the same manner, and for the same period, as the *connétable;* and their duties and powers are similar, with this difference, however, that they are subordinate to that officer, by whom the criminals they apprehend are presented before the Court, and to whom also their reports are addressed.

The *vingteniers* and *officiers du connétable* assist the constable and *centeniers* when necessary; but, unless accompanied by one of those superior functionaries, they cannot arrest even for the most heinous offence, committed out of their sight, though they may for any criminal act done in their presence. They are chosen by the parochial or vestry meeting, and hold their office for seven years in all the parishes except St. Hélier's, where the chief town is situated, in which, in consideration of the onerous nature of their employment, their time of service is limited to four years. In addition to their duties as policemen, the *vingteniers*, within the bounds of their respective "*Vingtaines*" (the name given in Jersey to the subdivision of a parish), collect the poor-rate, carry summons by order of the *connétable*, and levy certain fines which he is authorized to impose.

The authority of the members of the police is confined to their respective parishes. They are all sworn into office before the Royal Court. The forms of the oaths administered to the different ranks, which vary in some particulars, are to be found in the "Jersey Code of Laws," compiled in 1771. With the exception of the *vingteniers*, who receive a small percentage on the moneys they collect, they serve gratuitously. One of the most important of their duties remains to be stated. They form the *enditement*, or perpetual preliminary jury of their parish, except when either the accused or the injured party is one of their body, on which occasions the police of one of the adjoining parishes is called in to replace them. (32)

The following table exhibits the police establishment in the several parishes of the island.

| Parishes. | Connétables. | Centeniers. | Vingteniers. | Officiers du Connétable. |
|---|---|---|---|---|
| St. Hélier . . | 1 | 4 | 7 | 24 |
| St. Laurens . . | 1 | 2 | 5 | 12 |
| *St. Brélade . . | 1 | 2 | 4 | 15 |
| St. Ouen . . | 1 | 2 | 6 | 12 |
| St. Pierre . . | 1 | 2 | 5 | 12 |
| Ste. Marie . . | 1 | 2 | 2 | 12 |
| St. Jean . . . | 1 | 2 | 3 | 12 |
| St. Martin . . | 1 | 2 | 5 | 12 |
| St. Sauveur . . | 1 | 2 | 6 | 12 |
| La Trinité . . | 1 | 2 | 5 | 12 |
| Grouville . . | 1 | 2 | 4 | 12 |
| St. Clement . . | 1 | 2 | 3 | 12 |
| | 12 | 26 | 55 | 159 |

Total Police Force throughout the Island . . . . . 252

*The Prévôt—*

In each of the parishes where a royal fee or manor is situated, the tenants are bound to furnish a *Prévôt*, whose business it is to summon the parties in civil suits,—in those mixed cases called "*causes en ajonction*," in which the *procureur* acts jointly with the plaintiff,—and in some of a criminal nature. As there are no manors belonging to Her Majesty, and consequently no *Prévôts*, in St. Ouen's or St. Clement's, that office, in respect to those parishes, is filled by the *Prévôts* of St. Mary's and Grouville. In some parishes the *Prévôt* has an inferior officer to assist him, called "*le Sergent de la Reine*," whom it is also the duty of the tenants to supply. (32)

## PART II.—*Of the mode of administering the Criminal Law, otherwise, of Criminal Procedure.*

As the means employed for bringing a suspected person to justice, as well as the subsequent process, differ in many important respects according as the offence laid to his charge may be ranged under either of the following heads, it will be convenient to adopt that classification, however imperfect, and to consider separately each of its divisions. They are:—

I. Acts criminal *per se*, which may be called "*Common Law Offences.*"

* The existence of a small town, called St. Aubin's, in St. Brélade's, is the reason of its possessing a greater number of constable's officers than the other parishes, St. Helier's alone excepted, which I have already mentioned as the site of the principal town.

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II. Acts not in themselves criminal, but which are rendered such by some prohibitory enactment, otherwise, "*Statutory Offences.*"

## I.—*Common Law Offences.*

When any of the offences comprehended in this class has been perpetrated, there are several ways of bringing the supposed criminal to give an account of his conduct.

First. The *procureur*, or in his absence the *avocat général*, on receiving a report of the matter from a constable, or other authorized officer, may submit it to the Court, and move that an order or warrant be issued in consequence, for compelling the appearance of the offending person. This request is always granted as a matter of course. The order, or act, of the Court is different, according to the nature and gravity of the facts alleged. In cases of felony, and
(4) others of a very aggravated character, the Court issues what is called a "*Décret de prise de corps,*" by which all persons are, not only forbidden to shelter the party against whom it is directed, or favour his escape, but empowered to seize, and deliver him into the hands of the proper officers. When the imputed offence amounts to a misdemeanour only, an "*Acte de saisie*" is granted, in virtue of which the *vicomte*, or one of the *dénonciateurs*, arrests and incarcerates the offender, unless he can give sufficient security for his appearance to answer the complaint, when necessary. In cases of less consequence, the Court merely enacts that a "*signification,*" or peremptory summons, shall be served on the inculpated person by one of the officers first mentioned, and, should it be ineffectual, an "*Acte de saisie*" is resorted to.

Secondly. The *Procureur* may acquaint the Court with the facts that have come to his knowledge, without naming his informant, and apply for any of the above mentioned acts or warrants, on his own responsibility. This course is very rarely adopted.

(4) Thirdly. The most ordinary mode, however, (except for petty delinquencies when a "*signification*" upon a report is the usual process) is for the police of the parish in which the criminal act has been committed to investigate the whole matter, arrest the supposed malefactor, and present him, together with their report, before the "*Cour du Samedi*" at the earliest opportunity.

Whichever of these methods may have been employed for ensuring his appearance there, as soon as the accused is at the bar of the Court, the *Procureur* commences proceedings by reading aloud the act or warrant issued by the Court, the report of the police officer, or both as the case may be, and afterwards the accusation founded thereupon; and, having finished, he delivers
(9) the whole of these documents to the *greffier*, to be kept in his custody. From that moment he is no longer at liberty to alter, add to or amend the accusation in the slightest degree, though,
(8) as I have already stated, he may, indeed, abandon the whole, or any part of it, at any time previous to the judgment of the Court, or the verdict of the *enditement* or preliminary jury.

The accused is next called upon to plead to the charge; in doing this he may be assisted by
(1) as many of the advocates as he can afford to employ, though one only is allowed to speak, the others acting merely as advisers. Should he be unprovided with counsel, he is directed to choose one, by the bailli; or on his refusal to comply with that recommendation, an advocate is
(14) assigned him by the Court. Before putting in his plea, every facility is afforded to the prisoner and his counsel of examining the report and the accusation; and, should he wish for time to deliberate, his request is invariably acceded to. In this case, he is remanded to prison, or, if the Court see occasion to permit it, allowed to give bail.

On this head, the Court of Jersey has always shown the greatest indulgence to prisoners. In cases of breach of the peace, assaults, unless the life of the injured party has been endangered, and misdemeanours generally, bail is never refused: and it has frequently been accepted, even when the accusation has been for petty larceny, the penalty being of course proportioned to the magnitude of the offence. To qualify a party to remain surety for another, it is necessary he should possess real property in the island; but the smallest amount is sufficient. The practice of permitting the prisoner to give his own recognizance for his appearance is unknown among us: but he may obtain his liberty by depositing the required sum in the hands of the *vicomte.*

Should the prisoner, immediately on his arraignment, or at the expiration of the delay granted him for preparing his plea, confess his guilt, the Court, after hearing his advocate in
(5) mitigation and the *Procureur's* "*conclusions,*" that is, his observations on the facts of the case and the application of the law, generally proceeds to pass sentence at once; and its decision is
(29) final. At other times, when the offence is so serious as to require a severe punishment, the culprit is remanded until the next meeting of the *full Court*, when he receives his doom, provided, always, he persists in his previous avowal; for it is a maxim of our law that an accused
(13) person may retract, change or modify his plea at any time before judgment has been finally pronounced upon his case.

If the accused stand mute of malice, the Court orders a plea of "*Not guilty,*" "*Non coupable,*" to be entered on his behalf.

Should he demur to the accusation (which he may do with a reserve as to the truth of the
(10) facts), the objection is immediately discussed. In the event of its being set aside, he may then
(12) plead *Not guilty*, and is at liberty to urge anew his rejected plea at the trial. The authorities most frequently appealed to for the decision of questions of this kind, and of criminal law
(3) generally, are precedents, and the writings of the most celebrated English lawyers. The works of the most esteemed French jurists are also occasionally referred to.

In almost every instance, however, the plea adopted by the accused is *Not guilty*, as it allows of the utmost latitude in conducting his defence.

Whatever be the plea or "*déclaration*" put in, it is immediately recorded by the *greffier.*

When this is done, if the general issue has been pleaded, the mode of proceeding differs according as the case is considered to require the intervention of a jury or to be cognizable in a summary manner by the Court.

I must here observe that I am not aware that there exists any definite rule for the application of these two kinds of trial, both the one and the other having been employed in cases extremely similar. It may however be laid down, as a general principle, that every accusation, which, if proved, would subject the person who is the object of it to capital or corporal punishment, transportation, hard labour or lengthened imprisonment, must be submitted to a jury;—that assaults and breaches of the peace, unless accompanied with much violence and danger to life, are never tried in that manner except at the express request of the accused,—and that all those petty offences, against which it is usual to proceed by "*signification,*" are invariably judged by the Court alone. (13) (11) (5)

To return,—When a jury is dispensed with, the cause, on the motion of the *Procureur,* is sent to proof, "*envoyé en preuve,*" If, on the contrary, it is thought necessary to refer the matter to a jury, the *Procureur* prays to be allowed to *inform against the accused,* "*qu'il lui soit permis d'informer.*" In either case, the prisoner is then sent back to prison, or liberated on bail, according to circumstances, until witnesses can be called. (11)

These two methods of collecting evidence are distinguished from each other by several peculiarities. When recourse is had to an "*envoi en preuve,*" on the first day appointed for hearing evidence a list of the witnesses on both sides must be given to the *greffier* to be inserted in the Act of the Court, after which, even though the cause should be put off, no new witness can be added, nor are any allowed to depose whose names are not so recorded. 2. The case cannot be proceeded with, unless all the witnesses whose names are in the Act be present, or the party who calls them agree to forego the benefit of their testimony. 3. The witnesses are generally heard *vivâ voce,* and, if possible, all on the same day. Whereas, when an "*information*" is granted, the taking of evidence may be continued at intervals for an indefinite period, and the prisoner and Crown officer are at liberty to *innover,* as it is called, or introduce new witnesses, on each occasion. 2. Such witnesses as are present are heard without regard to "defaulters;" and, 3. The whole of the evidence is committed to paper. This is done by the *écrivains* or attorneys; and each question and answer, as soon as set down, is read aloud, when the prisoner (whose presence is indispensable on these occasions), or the prosecutor, if dissatisfied with the rendering, must propose his objections; and, if they are allowed by the Court, the necessary corrections are inserted. Once signed, however, by the witness, his evidence can no longer be excepted against, either then, or at any subsequent period. At the close of each day's examination, the depositions are collected and placed in the hands of the *greffier;* and the *procureur* is permitted to "*informer plus outre,*" to inform farther against the prisoner. (16) (17) (27) (18) (2) (17) (22)

In all criminal cases, the witnesses, whether in support of the prosecution or in favour of the prisoner, are summoned by the *procureur,* through the agency of the *vicomte.* In the event of their failing or refusing to appear, they are subjected to a fine; and the *officier,* that is the *vicomte,* is directed to seize and imprison them unless they give sufficient sureties for their appearance when wanted. When a witness is on the eve of leaving the island, or unable, from illness or other valid cause, to be present at Court, an act is obtained, at the suit of the *procureur,* authorising the *vicomte* to take down in writing, in the presence of the parties, the deposition upon oath of such witness to be afterwards used at the trial. Whilst on the subject of witnesses, I may as well state that, on all occasions, the prisoner has the right of calling as many as he pleases, and that in examining his own, as well as those brought against him, he is allowed the most unrestricted freedom. (15) (19) (23)

When neither party has any longer evidence to bring forward, the case is ready to be submitted to the *enditement.* This jury is composed of thirteen persons, who, according to the ancient custom, should be chosen from the police of the parish to which the prisoner belongs, but have in modern times, I believe, been frequently, if not habitually, selected from that of the parish where the crime has been committed, to avoid the inconvenience which should otherwise result when several persons from different parishes happen to be implicated in the same accusation. I need hardly mention that such of the members of the police as have been heard as witnesses, or have taken an active part in the capture of the offender, are excluded from the *enditement.* As every policeman on entering office is sworn to the faithful performance of all its duties, of which this is one of the most considerable, it is not thought requisite to exact an oath from him on each occasion of his serving on this jury. When it becomes necessary to convene it, the *procureur* addresses a letter to the constable of the parish, requiring him to provide a sufficient number of his officers to act as jurymen (*pour passer comme hommes d'enditement*) in the forthcoming trial: and in consequence of this order that functionary selects such of his subordinates as he thinks proper, and summons them by means of his *vingteniers.* (20)

On the day appointed, the accused standing at the bar, and in the presence of the full Court, the names of the men of the *enditement* are called over by the *greffier.* As soon as they have taken their places in the jury box, the prisoner is asked by the bailli whether he objects to any of the number, and those against whom a valid reason is assigned are struck off; but no peremptory challenge is allowed. The jury being formed, the *procureur* having first enquired of the accused whether he persists in his former plea or "*déclaration,*" proceeds to read the accusation, the acts and other papers relative to the case, and the evidence, after which the prisoner's counsel is heard in his defence, the *procureur* next in reply, and (frequently) the business is closed by the president's summing up the case, The *enditement* then usually retire, taking with them the depositions and other documents. On these occasions they are accompanied by the *vicomte,* whose duty it is to prevent them from communicating with any person. On their return, their verdict, if unanimous, is delivered by their foreman, who is, habitually, the (22) (24)

constable, or, if he be unable to act, one of the *centeniers*. Should they not be agreed, the foreman acquaints the Court with the circumstance; on which, being called up in turn, each in a low voice, so as to be overheard only by the jurats and *procureur*, who gather around him for that purpose, imparts his opinion to the bailli, who notes it down, and, having received the declarations of all the jurors, announces, as the verdict, the decision of the majority, without, however, mentioning the number of votes on either sides. If the prisoner is brought in "*plutôt innocent que coupable*," he is immediately liberated; if, on the contrary, the verdict is "*plutôt coupable qu'innocent*," he is said to be criminally indicted, and may then submit to the judgment of the Court, or appeal to the *grande enquête*. In the event of his preferring the latter alternative, he is sent back to prison until that jury can be summoned, which is effected with the least possible delay. Whatever be the verdict of the *enditement*, the *procureur* possesses no power of appeal; neither does he at any time in criminal cases.

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The *grande enquête* consists of 24 men, chosen by the *procureur* from the prisoner's parish (or sometimes, I believe, for the reasons I mentioned when speaking of the *enditement*, from the parish in which the offence was committed), and the two adjoining parishes, in equal proportions. When it becomes necessary to call it together, a verbal notice or summons is left, by the *prévôt*, at the residence of the jurors, at a late hour on the evening preceding the trial, a precaution doubtless originally intended to secure them from being tampered with or even spoken to on that subject. They are always selected from the most intelligent and respectable of the parishioners; but no pecuniary qualification is required of them, or at least none worth noticing, the only regulation on that head, which I am acquainted with, being the 33rd article of the ordinances, framed, in 1591, by the Commissioners, Pyne and Napper, which directs that none shall be admitted to form part of a *grande enquête*, who, besides being of a good reputation, does not possess real property in the island to the value of three quarters of wheat rent, or above; a considerable sum, without doubt, at that early period; but which, amounting to little more than 50*l*. of our money, is too trifling to answer the intended purpose at this time.

The procedure before the *grande enquête* is, in almost every respect, the counterpart of that which takes place before the *enditement*. The full Court being assembled, the *greffier*, beginning with the jurors of the prisoner's parish, calls aloud their names; and, all having answered and standing in the jury box, the prisoner is reminded by the bailli of his right of challenge, for which, however, as in the case of the *enditement*, he must show cause. The jury of the first parish being duly formed and seated, the *greffier* then goes on to those of the other two; and, as the number belonging to each is completed, the same question is put to the prisoner, and the same course followed as in the first instance. When at length the *enquête* is complete, the jurymen stand up at the call of the bailli; and, each holding up his right hand, the customary oath is administered to them collectively. These preliminaries adjusted, the depositions and other papers before produced to the *enditement*, together with the act containing its decision, are read. Sometimes, but very rarely, fresh evidence is adduced. The same order in speaking is observed by the advocate of the accused, the *procureur* and the bailli. The *enquête* then retires with the *vicomte*, and, on its return, gives its verdict in the form and manner which has been already described, when speaking of the *enditement*. If five of its members vote the prisoner innocent, he is acquitted: if twenty concur in finding him guilty, he is duly convicted; and the Court, after hearing his counsel in *mitigation*, and the *procureur* on the application of the law, give judgment against him. He is then delivered over to the *vicomte*, and led back to prison, in irons if his crime be very heinous. This practice was followed in ancient times in nearly every case, and even after a condemnation by the *enditement*.

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When transportation is the punishment awarded, a copy of the sentence is transmitted to Her Majesty in Council to be confirmed; that formality being necessary to authorize the admission of convicts from Jersey into the penal colonies.

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At the close of every criminal trial, the *greffier* is directed to restore to their respective owners, without cost, such articles as, having been sequestered or recovered by the police, had been placed in his keeping at its commencement.

## II. *Statutory Offences.*

Offences of this description, however serious the penalty attached to their commisson, are never tried by a jury; and the proofs necessary for the conviction of the offender are now sought to be obtained by an "*envoi en preuve*" only, though it is not very long since an information was occasionally resorted to, for that purpose. The prosecution commences by an "*acte de saisie*," or a "*signification*," issued at the suit of the *procureur*, in those cases in which imprisonment forms part of the punishment, or where the amount, if a fine, is left at the discretion of the Court; but, when the fine is fixed by the law, a bill, or summons, signed by the *procureur* or his *authorisé*, is served by the *prévôt* on the inculpated party, who is allowed to make one default. On repeating it, he is condemned, and the penalty adjudged.

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It appears from the records that, in former times, the "*inferior number*" was in the habit of deciding summarily on matters of this kind; but of late it has been a prevalent practice, when the fine inflicted has exceeded five pounds, to grant an appeal to the full Court, whose award, however, is final.

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Before terminating these remarks on the administration of Criminal Law in Jersey, it will not be out of place to give a brief account of the manner in which coroners' inquests are held. When a corpse has been found, or a person has died under circumstances which call for an enquiry, the bailli, on being informed of it, addresses his writ to the *vicomte*, requiring him to investigate the matter. On receiving this order, the *vicomte*, accompanied by the *procureur*, and having collected twelve men as jurymen, repairs to the spot where the dead body is lying.

On arriving there, the members of the inquest, being sworn, proceed to inspect the corpse, hear the report of the surgeon who is generally in attendance, and question, but not upon oath, such persons as are likely to throw light on the occurrence. This done, they retire in private with the *procureur* and the *vicomte*, and deliberate on their verdict, which is taken down in writing by the latter; who, before dismissing them, gives each an injunction to appear on the next court-day to confirm it. On that day, all the men of the inquest being present, the report of the *vicomte* is read by the *procureur*, after which the bailli, addressing each of them in rotation, enquires his opinion, which is generally, but not necessarily, confimatory of that which he gave before the *vicomte*. The verdict is then written down by the *greffier*. When the members of the inquest are not unanimous, the declaration of the majority alone is recorded. Each juryman, on leaving the Court, is entitled to claim half a crown for his trouble from the *vicomte*, who, as well as the *procureur*, receives a fee on these occasions. Any person being in the highway or any public place, who refuses to accompany the *vicomte* as member of an inquest, is liable to be condemned by the Court to a fine of 12*s*. 6*d*., with costs, on the report of that functionary.

I shall now point out what I consider the defects of our Criminal System. (34)

I. The first and most prominent is its utter inadequacy for the repression of petty offences.

As, among the four separate tribunals into which the Royal Court divides itself, there is but one, the "*Cour de Samedi*," able to take cognizance of criminal matters, and as those Courts never sit simultaneously, it follows that there are seldom more than two opportunities in the course of a week of bringing an offender to justice. And, even were it otherwise, as the presentation of the accused, how trifling soever his fault, must always be accompanied with a report from the arresting officer (which requires time for its preparation), it can never take place until he has suffered a confinement of 48 hours at the very least. Besides, witnesses never being heard on that occasion, another delay ensues until they can be called,—a week,—perhaps more, elapses in this manner; at the end of which the prisoner, perchance, is acquitted or found to deserve a reprimand,—a petty fine, or twenty four hours imprisonment! It is true that in (34) most of these cases the accused is allowed to give bail; but the poor, who form the mass of this kind of offenders, are rarely able to avail themselves of the permission; and the greatest sufferers by this dilatory mode of proceeding are those very classes whose time is most precious, and whose liberty should be the more tenderly guarded, that their inability to labour is followed by the misery and consequent demoralization of their families. The effect of this system is that much petty delinquency is overlooked by the police, through humanity, and allowed to remain unpunished.

II. The second defect of our criminal system is the want of any examination before the accused is committed, or put on his trial.

Every police officer, it is true, before incarcerating a person whom he has seized, is bound to obtain the permission of a magistrate; and, no doubt, the original object of this provision was to ensure that no man should be deprived of his liberty without cause or enquiry: but in practice no investigation does or can take place. A suspected individual is arrested, perhaps late in the evening; the police officer, uncertain when or where he may find a magistrate, cannot conveniently take his prisoner with him in search of one, but generally leaves him in the custody of a fellow policeman, or takes him directly to the gaol, and then seeks for the bailli or one of the jurats, to whom he relates the circumstances of the case; and, having obtained from (34) him a written order, he returns and delivers it to the gaoler, who, forthwith, takes the prisoner in charge. Nor can any blame be justly attached to the police for this rather summary way of proceeding: it is forced upon them by necessity. Again, when the party is brought before the Court, he is sent to trial on the report of the arresting officer, without any further examination, and may have lingered long time in prison, when, perhaps, on evidence being heard he is found to be innocent and the *Procureur* sees fit to discontinue the prosecution. It must be allowed that, owing to the vigilance of that functionary, a case of such hardship does not often occur; but the fact of its possibility is sufficient to render a change on this point indispensable.

To remove these two glaring imperfections in our practice, I would beg, with all deference, to suggest the following plan.

Let a police court be established composed of the bailli (or in his absence one of his lieutenants), as judge, the *Procureur* or *Avocat Général* as prosecutor, and the *greffier* as clerk, (34) to sit each day (Sundays excepted) from 9 till half past 10 o'clock* in the morning, with power to bail in all necessary cases, and to decide summarily on such as involve a punishment of not more than one month's imprisonment or a fine of 10*l*. Before this Court all persons arrested on suspicion of crime should be brought up within 24 hours afterwards (except such as were seized on a Saturday, who should be presented on the Monday following), and the arresting officer examined upon oath, together with as many witnesses as might be present. If the evidence were conclusive against the accused, he should be immediately sentenced, or, when the offence was beyond the jurisdiction of the judge, be committed to prison, or allowed to give bail to take his trial in the ordinary manner before the Royal Court. When the depositions of the witnesses, without being decisive, were sufficient to justify suspicion of the accused, he should (if unable to furnish bail) be remanded, to allow of calling others, for a period of not more than two days, unless at his own request. In all cases referred to the superior Court, the *greffier* should be charged to take notes of the evidence, and an authentic copy, together with the act or decision of the Judge, be delivered to the *Procureur*, to be used by him in the same manner

* It is proper to remark that, during the first or April term, and part of the second, the Royal Court commences business at 10 o'clock in the morning: but this need not be an obstacle to the plan proposed above, if otherwise approved of, nothing being easier than for the Court to open at 11 o'clock throughout the year as it now does during vacation and the latter part of the September term, and to continue sitting till 3 o'clock, instead of closing at 2, as is now the custom.

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and for the same purposes as the report of the arresting officer now is. It would be better, I consider, that parties thus sent up for judgment were tried by a jury in every instance, as such a regulation would afford the criterion, now wanting, for deciding when this kind of trial is necessary. Justice also requires that, when a person having been brought before the police court is discharged, no record should be kept of the event. It might also be expedient not to allow costs to be exacted in this Court under any circumstances, not even when the party accused is convicted and sentenced, the effect of such a practice being to increase the pain without adding to the exemplariness of punishment. To avoid inconvenience and delays, it would be proper to allow the police to place their prisoners in the custody of the gaoler until they could bring them before the police court, without putting them under the necessity of having recourse to a magistrate, as is now the case, and to give them the power of binding over to appear as witnesses any persons present at an arrest, or whose testimony they might consider necessary.

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Some plan of this description, I humbly conceive, would remedy in a great measure the two evils pointed out above (which are the greatest by far of our present system), and with this advantage, that it can be carried out without adding to the number of existing functionaries, and without any of those violent innovations on established usages which are always to be deprecated. Neither need it entail any permanent expense on the country; for, though the present bailli and *greffier* might require some remuneration for the additional trouble it would impose upon them, it would not be necessary to extend any such gratification to their successors, both those offices being already sufficiently lucrative.

III. The present mode of taking evidence is liable to some objections.

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1. In the first place, when evidence is sought by an "*Information,*" both the prosecutor and the accused are allowed to introduce new witnesses as often as they think proper, a liberty which, it is evident at sight, may be greatly abused, and should therefore be restricted. I am inclined to think it would be sufficient for all the purposes of justice to permit the parties to call witnesses on two occasions; each, in the following manner. On the first day of taking depositions, the *Procureur* should give in a list of witnesses for the prosecution, and, after it had been gone through, the accused should produce the evidence in his own behalf. The *Procureur* might then bring forward a fresh series of witnesses, and the business should be closed by the prisoner's calling others to contradict them.

2. Secondly, I consider it a defect that none but written evidence should be produced at the trial. Not that I should wish to see the use of written evidence abolished. On the contrary, I think such a measure would be attended with infinite disadvantage to the accused; but, as mens' minds are differently constituted, it must frequently happen that proofs which to the prosecutor appear most convincing fail to satisfy the jury; and it would therefore be preferable to enable them to remove their doubts by summoning the witnesses who had already deposed to appear again at the trial, to be orally examined.

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IV. The *enditement* or preliminary jury, composed of the members of the parochial police, might, I think, advantageously be dispensed with. It serves to protract the trial without accomplishing any useful purpose: and all must allow that, though the practical results have not been correspondently mischievous, its composition is, theoretically, very defective.

V. The present mode of empannelling the *grande enquête* offers an anomaly which it were well to remove. For to entrust the nomination of a jury to the officer of the Crown, without even the right of peremptory challenge on the part of the accused, as a check on his conduct, is to render this institution nugatory in the very cases where it is principally useful, namely those of a political character. It is but just to acknowledge that, in every instance which has come under my notice, this power has been worthily exercised, and the *enquête* been composed of men of acknowledged respectability: but nevertheless it were better even for the *Procureur* himself that it were placed in other hands. I would suggest that, about the middle of each year, the *vicomte,* or the constables (each in his parish), be commissioned to form a list of all the persons throughout the island whom they consider qualified to sit on a jury; which list should be posted up and for a certain period in the vestibule of the court house or any other public

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place, to enable those who have a right to be exempted to make good their claim. At the expiration of the appointed time, the *vicomte* should proceed, in presence of the Court, to draw by lot, from those remaining on the list, the names of 150 persons to act as jurymen during the ensuing year. When a jury was required, the *vicomte* should select, also by lot, from that number, 50 names on the morning preceding the trial, and summon the parties so designated in the manner now practised. On the day of the trial, the jurymen being present, their names inscribed on separate tickets, and placed indiscriminately in an urn, should be drawn out, one by one, and called aloud by the *greffier* until they had passed unchallenged to the number of 24. It might be judicious to add three others as supplemental jurymen, with power to vote only in the event of some of the 24 being compelled, through indisposition, to retire. When a second jury was wanted, the 50 men who served in the first might be exempted, and the requisite number chosen from the remaining 100; this second division being in turn excluded, when a third jury was called, which should then be taken from the first and last fifties, and so on for each succeeding jury, which should thus be selected from 100 names on every occasion. A right of peremptory challenge to some extent should, I think, be allowed both to the prose-

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cutor and the accused.

I am inclined to believe that some scheme of this kind, that is based on the principle of committing to some competent person or persons the choice of the whole body of jurymen, would be found more successful, as a means of securing the formation of an impartial and intelligent jury, than the establishment of a pecuniary qualification for the same purposes; because, owing to the great subdivision of property and consequent equalization of fortunes in Jersey, such a qualification, if high, would restrict to a few only the right of sitting as jurymen, and thus render their

Robert Pipon Marrett, Esq. 4 August, 1846. (34)

duties burdensome; while, if low, or even moderate, it would include a great number of persons who, however respectable, are totally unfitted by education for filling an office so important and responsible.

VI. The point is not perhaps of much consequence: but it would be better, I conceive, if the custom of allowing the prosecutor to speak last in criminal suits were changed. It is but equitable that the accused should be fully acquainted with the charges brought against him and the proofs and arguments in support of them, before being called upon to defend himself.

VII. Considering the peculiar duties and extensive powers of the *Procureur Général*, it appears to me contrary to sound policy that, on the one hand, he should be allowed to practice as barrister, and, on the other, receive such inadequate remuneration. Called upon, as he is, to enforce sternly and impartially obedience to the laws, and to pursue with the same severity the transgressors, be they rich or poor, feeble or powerful, it is surely of moment that he should be independent in fortune, and delivered from a position which in some measure obliges him to court the favour and patronage of his fellow citizens. His occupations moreover, in his public capacity, are more than sufficient to occupy his whole time, without the addition of private business; and, if necessitated to undertake both, he can hardly avoid neglecting the one or the other. It is true that those who have hitherto held this post have been, for the most part, men in easy circumstances, to whom the acquisition of a numerous train of clients might be a secondary consideration: but it must frequently happen that the person most qualified to fill the situation is least able to afford such pecuniary sacrifices; and Her Majesty will be reduced to the alternative of choosing a less worthy representative, or of preferring, as such, one who must often be (34) driven to sustain a painful conflict between his interest and his duty.

Another, and a great, advantage would accrue to the public, if the *procureur* were removed from the bar, and his salary increased. He might then, after the example of his brethren in France, be permitted to give his opinion on the application of the law in civil cases, and assist the bench in the resolution of technical difficulties, a practice which could not but have a powerful influence in maintaining the uniformity of our procedure, which, from the constitution of the Royal Court, it is evident must frequently be in danger of varying.

Such are, in my estimation, the principal defects of the system of administration now prevalent in Jersey in respect to criminal matters. As to the remedies and improvement which I have taken the liberty to propose, I shall only say, in leaving them with all submission to your consideration, that I shall be satisfied if they can furnish one suggestion which may serve to further the interests of justice and the advantage of my native country.

*Jersey, 4th August,* 1846.

I have, &c.,
ROBERT PIPON MARETT.

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No. 19.

J. Le Couteur, Esq., Viscount.

*Answers of J. Le Couteur, Esq., Vicomte of Jersey to the first series of Questions, together with a Plan for some modifications in the Royal Court.*

1. They are, *first,* from having held the office of constable of St. Brélade six years.

The constable is elected triennially, by all males of twenty years of age and upwards, of sound mind, whose names appear on the parish rate book.

The Constable is chief of the police in his parish, with power to search and seize; he has the administration of its revenue, the charge of the roads, and superintendence of its public works. He is, "*ex officio,*" a member of the States or Legislative Assembly, and is therefore supposed to have, according to the most eminent commentator on our laws, Lieutenant Bailli le Geyt, 1660 to 1710, a great knowledge of the police, and the practice of the criminal law as connected with his office.

*Secondly,* From having sat on the Bench, as a jurat of the Royal Court, above two years.

*Thirdly,* From having, in conjunction with two more members of the states, made a *précis* of all the orders of the Sovereigns in Council, collected from the records of the Court and States, for the first time, dating from the year 1504 up to 1832; eight hundred and six of which I have transcribed. They are now ordered to be printed at the charge of the States.

*Fourthly,* From having held the office of Viscount, or High Sheriff and Coroner of Jersey, years.

*Lastly,* From having held the command of two militia districts and regiments successively, above twenty years, which has made me acquainted with the militia criminal law.

2. There are two Courts, the Royal Court and the Ecclesiastical Court.

The jurisdiction of the Royal Court I consider to have originated from the ancient Norman Code, and its guide antecedent to the conquest might be solely the grand *Coustumier de Normandie.*

The composition of the Royal Court, in its present form, is to be found in the charter granted to Jersey by King John, said to be four years older than "Magna Charta," equally valuable, and more gratefully acknowledged, as it was not wrested from the Sovereign, but was spontaneously granted after a personal residence.

The constitutions of King John, which were confirmed by 33 Henry III in 1248, are enrolled at this date in the rolls called Escheats, in the Tower; they are in eighteen articles, as annexed.

These twelve jurats were thus to be natives, elected by the officers of the King and the chief inhabitants; with power, when presided by the Bailly, to try cases, in the absence of the Justiciers, and, with them, all cases whatsoever, excepting high treason or violence offered to a magistrate or the officers of His Majesty during the exercise of their duties, which were reserved to the Sovereign.

JERSEY.

*Answers to Questions.*

SERIES I.

Le Couteur, Esq., Viscount.

The jurisdiction of the Royal Court now extends over every offence as a court of appeal; its powers have been extended or explained, in some cases abridged, by various orders of the Sovereigns in Council, by ordinances and commissions.

3. The *Grand Coustumier*, a book, according to Blackstone, "of very high authority,' states, as appertaining to criminal law,

"De chose où il y a peril de vie ou de membre.
"De Haro.
"De suyte de meurtre.
"De Querelles.
"De Roberie
"De Trahison au Duc.
"De Suyte de Mehaing.
"De Suyte d'assault.
"De Trefves Enfrainctes.
"De Reception de criminels
"De Forfaictures."

with some inferior offences which are all cognizable by the Royal Court, excepting high treason, or violence as aforesaid.

November 3rd, 1494. King Henry the seventh, who had resided in Jersey while Earl of Richmond, by an ordinance dated 3rd November, 1494, at the palace of Westminster, ruled: "The captain (now the lieutenant governor) is enjoyned not to interfere in the nomination of the "Dean or Bailly, nor with the jurisdiction of the Court ecclesiastical or secular, which is reserved "wholly to the Bailly and Jurats."

Any difference between the captain and the Court to be referred to the Sovereign in council.

The Governor may arrest, and take bail for, or on suspicion of, high treason; but judgment is reserved to the King in council.

June 17th, 1495.—King Henry VII. further enlarged the power of the Court, and restricted that of the captain; soldiers were made subject to the jurisdiction of the Royal Court.

The captain or his deputy, on suspicion of, or for, high treason, was to arrest the person and property of the accused, with the advice (however) of two jurats, until the decision of the Sovereign.

The captain to aid and assist the jurats for the due execution of their judgments.

No unlawful meetings to be held under pain of imprisonment, corporal punishment and fine, at the King's pleasure.

The King names the Bailly, the Dean, the Viscount and his Procureur; the captain, or the jurats, not to interfere in their nomination.

No jurat to act, until openly sworn in court to administer justice indifferently, under a penalty.

Misconduct in a jurat to be punished by dismissal, and to be held incapable from holding any office.

No captain, his deputy, or jurat, to pardon in cases of murder, theft, or other criminal offence punishable by sentence of death, such being reserved to the Sovereign.

The constables (who seize for criminal offences) to be freely elected by the elders in each parish, without any interference of the captain or jurats.

No murderer, thief, or banished man, to be suffered to remain in the castle (the prison then) or the island. This I hold to be the first authority for banishment and transportation.

The common seal of the island to be opened and set to Acts, in the presence of seven jurats (consenting thereto); and their names to be registered.

No captain, or his deputy, in anywise to disturb the Courts or proceedings, whether spiritual or temporal.

1562. *October*, 20.—Ordinances of Sir Hugh Pawlet, Governor, Richard Worsley, George Paulet, Geo. Miller, and Peter Smith, Commissioners, sent here by Queen Elizabeth.

Their Commission is duly entered on the rolls of the Court "d'héritage," with extensive powers to make laws, sell crown lands, &c.; their ordinances are framed with the assent and counsel of the bailly and jurats.

These were published, or rather proclaimed, but have not yet been found registered, and are therefore not admitted as law.

1565. *June* 22.—All suits to be heard, ordered and adjudged in the same Isle, and not within this realme; and all appeals to be made according to the words of their charters "Au Roi et à son conseil."

1572. *May* 13.—Order of Queen Elizabeth.—That no appeale in any cause or matter, great or small, be permitted or allowed before the same matter be fully examined and ended by definitive sentence or other judgment, having the force and effect of a sentence definitive.

1591. *April* 3, 33rd Eliz.—Tertullian Pyne, L.L.D., and Robert Naper, Esq., Royal Commissioners, sent here by Queen Elizabeth, assisted by Anthony Paulet, Esq., the governor, the bailly, jurats and states, framed an admirable code of laws "Ordres, Loix et Ordonnances," in thirty eight articles, which we cannot find registered in any public record, though it received the (great or) common seal of the Island, and was signed by the Commissioners, and countersigned by the governor, bailly and jurats, "pour meilleur testimonial des prémisses;" yet it is not admitted as law.

I possess a copy of it under the great seal, verified by the signature of the bailly and three jurats, as a copy made the 6th of May, 1774, from a copy dated the 23rd of March, 1750, also verified by the then lieutenant bailly and two jurats, as a copy of one collated with the true original, the 30th September, 1591, and signed by J. Dumaresq, baïli, J. De Carteret, P. De Soullemont, jurats.

It is suspected that, as it trenched on some Court abuses, it has failed to be registered.

1635. *September* 24. *Art.* 1.—Order at the Star Chamber, 12th June, 1635. "Whereas there is no punishment by the laws and customes of that island for accessorys in murther, and felonys after the fact done, videlicit for such as favour and receive the principalls before their convict, it is thought fitt and ordered that such accessorys shall be punished by fine and imprisonment, and for such also who convey felons out of the island after proclamation made for their apprehension and who brake prison, and for the favourers of such offenders and compounders with them, that they be punished by fine and imprisonment.

*Art.* 6.—Gives power to the governor, bailly and jurats to reform abuses in taverns, to punish drunkards, and to grant licences to alehouse keepers.

*Art* 12.—Charges the sheriff, under sheriff and other sworn officers of the island to levy the revenues of the Crown upon the bodys, lands and goods of the partys by distress, in or out of term.

1667, *May* 3.—At the court at Whitehall, ordered, on a dispute whether the punishment of the crime of murder committed "by a soldier of the garrison there did properly belong to the court royal or to the court martial of the island:" That the trial, judgment and execution of the party criminal doth of right appertaine and belong to the court royal of that island.

1671, *May* 19.—At the court at Whitehall, order regulating the holding of the courts.

*Art.* 3.—The bailly or his lieutenant to be attended from their chamber by the jurats and officers to the bench; to bear him due respect, especially when he is in the court, &c.

The offender to be suspended till he hath asked pardon before the court, if he be a jurat or officer; if not, to be imprisonened till he hath asked pardon and paid the fine that shall be laid upon him, &c.

*Art.* 4.—That no jurat plead or give counsel in any cause but his owne; and, if he presume to doe it, that he shall loose his vote for that time: nevertheless, if a jurat shall not be satisfied concerning any point belonging to the cause in hand, and shall desire to be better informed therein to the end he may give right judgment in it, the judge shall cause him to receive satisfaction.

*Art.* 5.—That the jurats assisting in court do deliver their opinion, not arbitrarily, but according to the laws and custumes of that isle.

*Art.* 9.—Advocates not to interrupt each other, silence being kept by one while the other pleads; transgressors to be fined by the judge, for the first offence, any sum not exceeding three livres tournois; for the second, to be suspended from his place for one month; and for the third offence to be absolutely put out of his place: any other person to be fined not exceeding three livres tournois.

1679. *December* 17.—Att the court at Whitehall.—All orders warrants or letters relating to the publick justice of the said island, which are to be standing rules for their proceedings, be registered in the Royal court before they be put in execution.

*Art.* 2.—And as to Acts of parliament, wherein that island is named or any ways concerned, that your majesty will be pleased to direct that such Acts of Parliament, so soon as they are printed, be transmitted to that island with an order of your privy council annexed, directing the registering and publication thereof.

*Art.* 6.—The prison being at an inconvenient distance, leave given to erect one in the town of St. Hillary: persons charged by their tenures obliged to fetch the prisoners from Mount Orgueil Castle to the court at St. Hillary, and during the Assizes to attend there and carry the prisoners back at their own cost and charges, &c.

*Art.* 8.—The bailiff and jurats not to imprison any soldier of the garrison there, upon any pretence whatsoever, except for breach of the peace, without leave of the governor first had and obtained, nor intermeddle with any difference between soldier and soldier.

1689. *March* 13.—Att the court at Whitehall.—"As to the representation of the deputys of the estates of your Majesty's Island of Jersey of the great defect in their customs of proceedings in criminal causes within the said island, I have considered the same: and, in regard that there is no distinction made there betwixt wilful murder, manslaughter, and chance medley, &c., His Majesty is likewise pleased to order that, if for the future it shall appeare by good evidence to the Royal Court in Jersey, upon the tryal of any persons for murder, manslaughter and chance medley, that there is no premeditated malice, and that the partys are fitt objects of mercy, the judges of the said court do upon such occasions suspend all further proceedings against the criminal, until His Majesty be made acquainted with the state of their respective cases, and his Royal pleasure be signifyed thereupon."

N.B. Le Geyt, the commentator on the laws of Jersey, complains of this inroad on the power of the Royal Court.

1690. *December* 11.—At the Court at Whitehall.

Upon a complaint made to this Board, by the Deputies of the Estates in Jersey, relating to the officers and soldiers now in that island, His Majesty, &c., "That in all cases between a souldier and an inhabitant, upon breach of the peace, the tryall be left to the civill magistrates, and the souldiers delivered up to the civill officers, and the offender punished according to the law of the place.

"That, in all cases hapening between souldier and souldier relating to military discipline, tryalls be had at a court martial as formerly."

1697. *March* 25.—Pardon extended to Thomas Court, condemned for homicide.

This order legislates in cases of murder, homicide, &c.

1699. *November* 30.—At the Court at Kensington (the above explained): which order was grounded upon a representation formerly made to His Majesty, that by the law of that island the punishment was capital in all cases where any person was found guilty of the death o a man, and that there was no distinction of punishment in cases of murder, manslaughter or

chance medley: and His Majesty having been since informed that, according to the law and ancient usage of that island, the bailiff and jurats upon the tryall of any person accused for the death of another, unless they find the offence to be murder, do not proceed to inflict capital punishments for the same, but do inflict lesser punishments, according to the nature and circumstances of the offences; His Majesty hath, therefore, thought fitt in Council to order that the said Order of the 23rd of June, 1698, for stay of execution in cases of murder, manslaughter and chance medley, until His Majesty's pleasure should be known, shall be restrained to cases of murder, and other cases where capital punishment is inflicted, and where the said Court shall think the offender a fitt object of His Majesty's mercy, and no other.

The whole case to be transmitted.

1723. *November* 1.—Letter from the Lords Justices, in the absence of the King, directing the sentence of the Royal Court to be carried into effect against Philippe Ballaine for murder.

1729. *March* 26.—Order issued, in consequence of a seizure of India goods made by the constable of St. Brélade, and sequestrated by the Court. An important order! as it laid down a rule of practice. Witnesses were to be heard *vivâ voce;* and the Court was to follow the order *implicitly.*

1736. *May* 21.—Pardon extended to J. Bishop and Marie le Maistre, for infanticide, who could not obtain a judgment *for want* of a sufficient number of jurats on the bench, by petition, after a long imprisonment of three years.

1736. *August* 11.—Pardon to Matthiew le Porcq (for forgery), recommended to mercy, having undergone banishment four years.

1746, 1748, 1751.—Three several pardons for accidental homicide.

1761. *March* 10.—Pardon to Jean Cohu (*before the close of his trial*) for shooting Joseph Nagraaf while stealing apples.

1765. *July* 26.—Doleance and complaint to the Sovereign in Council of Nicholas Fiott, Esq., against the Royal Court for injustice. Condemned to make "amende honorable" for having been wanting in respect to the Royal Court.

1771. *March* 28.—Pardon for *seditious conduct* during an insurrection on the 28th September, 1769.

In the code of laws, approved, ratified and confirmed by the King in Council, under this date, are many fines or imprisonments, imposable for the following offences.

Cattle allowed to run wild.
Against the market laws.
„ the game law.
„ persons having dogs out with them after the close of the shooting season.
„ selling new cider.
„ sabbath breaking.
„ strangers or foreigners selling goods without licence.
„ workmen for irregular hours.
„ thatchers smoking while at work.
„ goldsmiths using improper alloy.
„ a strike among workmen.
„ improper weights and measures.
„ millers, if grinding corn on the Sunday.
„ persons for cutting arenaceous grasses on the sand-banks, or breaking the turf.
„ all military offences in the militia code.
„ erecting horse mills to grind for the public, excepting those who have water or wind mills.
„ illegal modes of fishing.
„ tavern keepers, for keeping disorderly houses.

These, with some others, which have become obsolete, or have since been amended, are contained in the old code of laws.

1779 and 1781.—Two men pardoned; one for accidental homicide.

Same date. *June* 15.—*High treason.* Edouard Millais *suspected* of high treason. *The Governor* empowered to take depositions in this case.

1790. *March* 24.—Two more Royal pardons for homicide.

The Mutiny Act to be registered at *length.*

N.B. *February* 17.—The Lords of Council will be ready to hear the Deputies of Jersey relative to trials by jury.

*October* 1.—Burglary. John Rival, tried for getting in at a window of a house in St. Helier, being found guilty by the *enditement,* submitted to the judgment of the Court, which sentenced him to be whipped, to be banished the island for the space of seven years, and that his personal property, if he has any, be confiscated to the use of the King.

"But the Court, at the same time, considering that there is no positive law or custom in the country which decrees a punishment for the crime in question, and that the judges are obliged, by their oath, to pronounce sentence according to the laws and customs of the island; the Court thereupon judged that the sentence should be suspended until your Majesty's pleasure should be known."

"The Lords of the Committee, in obedience to your Majesty's said order of reference, have taken the said act and proceedings into consideration, together with a subsequent letter of the 23rd of June, 1790, from the Greffier of the Royal Court, written by direction of the said Royal Court, in which it is set forth, That formerly the Royal Court did certainly order the infliction of corporal punishments without seeming to need the authority of a law, or having any fixed rule to go by, as appears by the dissimilarity of punishments inflicted for crimes of the same nature. That the Royal Court exercised also the power of legislation; laws and ordinances were as often enacted

by them as by the body of the States: but of this accumulated power of legislation and jurisdiction the Royal Court were deprived by His Majesty's Orders in Council, bearing date the 28th March, 1771, and prefixed to the Code of Laws; which order expressly declares that all other political and written laws heretofore made in this island, and not included in the said code, and not having had the Royal assent and confirmations, shall from thenceforward be of no force or validity. Whereupon their Lordships do agree humbly to report as their opinion to your Majesty, That, as there is no law in Jersey, for so they are informed, to make burglary a capital offence, it cannot be considered as a felony, *unless* the breaking the house in the night time is accompanied with a theft; but the simple act of breaking into the house, especially if done with an intent to steal, is a very high trespass and misdemeanour, and punishable by fine, imprisonment, corporal punishment, or banishment for a certain time, according to the discretion of the Court; and they are therefore of opinion that there is no defect of law for the punishment of this offence, and the application to Your Majesty to make a law, "*ex post facto*," to punish this criminal, is highly improper. But, if the States should think it expedient to make the offence of burglary a capital offence, as it is by the law of England, they may, if they shall be so advised, propose a new law for your Majesty's consideration, in order to be enacted and confirmed by your Royal sanction, after Your Majesty shall have signified your allowance to have such a law enacted.

"Upon this ground the committee think it may be advisable, if Your Majesty so please, to order the Royal Court to carry their own sentence into execution." Ordered, &c.

1793 to 1800.—Three men pardoned in cases of homicide.

Five men pardoned in cases of housebreaking.

1800. *April* 23. Sodomy or bestiality, to be punished by sentence of death.

„ *July*, 29. Richard Smith sentenced for sodomy, pardoned.

1804 to 1807. Three men sentenced to death, pardoned.

1811. *June* 11. Charles Lange, sentenced to death, pardoned on condition of serving His Majesty in the Army for life.

1812. *Dec.* 9. Several persons, Englishmen, ordered to be arrested for having aided some prisoners of war to escape.

1821. *March* 31. The Dean of Jersey *v.* the Reverend Mr. Frossard. Order, annulling the acts of the Royal Court which inhibited the Dean from proceeding in the Ecclesiastical Court against Mr. Frossard.

1821. *March* 31. Richard Nutt charged with fraudulent bankruptcy in England, and seized.—Order thereon.

1826. *Sept.* 16.—P. Perrot condemned to a fine and costs, for a libel on the Dean.

1828. *March* 19.—Three Officers in the Militia ordered to return to their duty; and the judgment of the Jersey Court reversed.

N.B.—I have quoted all these orders of Council, because, as precedents confirmed, they are law. In the new code of laws, printed last year, called "Lois et Réglemens des Etats de Jersey," it will be seen that many of those which I have enumerated have not been published; merely those which have been confirmed since 1771. The law for the markets which is inserted in it, not having received the Royal sanction, has expired.

The articles in the new code, which involve penalties for their infraction, are chiefly these: (See pages 1, 23, 251.)

The militia code, for the artillery, infantry and lads, in this—drunkenness on guard, desertion, or sleeping while on sentry, to be punished with the greatest rigour of the law. For mutiny or insubordination the offender to be seized and sent to gaol. Fines for all other military offences, or imprisonment in default of payment.

p. 31. Fines against persons who refuse to contribute to the support of the public pumps, scavengers, &c.

p. 42. Parish Vestries. This, though not under the head of criminal law, has reference to it; as the *officiers du connétable*, who form the *enditement* or the first jury in criminal cases, are elected by the vestry in the eleven parishes of the country, for seven years, and in St. Helier's, the town parish, for four years; they have *ex officio* a vote at all vestry meetings. The *vingteniers* too, who are seizing officers next in rank to the *centeniers*, are also elected by the vestry. A *vingtenier* may preside at a vestry meeting, or at an *enditement* in the absence of the constable and the *centeniers*.

p. 51. Fines against tumultuous meetings, resistance to the authorities while suppressing them, punishable by banishment; damages for injuries done to property payable by the parish.

p. 57. The keepers of disorderly houses or taverns, punishable by fine.

p. 62. Tanners subject to fines for non-compliance with the law.

p. 71. The Market law which expired in 1811.

p. 87. "Le banon" law to regulate the right of common—a mischievions law which has given rise to much ill will and litigation. Heavy fines are imposable for cattle breaking common, &c.

p. 97. Road law—an excellent one requiring merely slight changes for additional power to commute labour for money; with a paid police to levy the fines, and to enforce its provisions.

Fines against drains running on the roads, building along a highway without leave of the Road Committee—encroachments on a road—disobedience of orders whilst at work on the roads—violent driving—riding on carts—with minor clauses—in default of payment, imprisonment.

p. 125. Regulations for the harbours—infractions of these punishable by heavy fines.

p. 134. Anchorage and health boat dues—in default of payment, seizure, confiscation and sale of vessels or goods.

p. 145. The Quarantine law, 6 Geo. IV. cap 8.

p. 199. Fine against the introduction of foreign cider.

p. 203. Fines against the importation of cows, heifers and bulls from France.

p. 215. Vraic—periods for cutting seaweed (a valuable manure): heavy fines against the infraction of this law.

p. 255. Décrets—Bankruptcy law: fine or imprisonment in fraudulent cases.

p. 305. Oaths and declarations—persons making false ones, liable to fine or imprisonment.

p. 317. All infractions of any *triennial* law of the states may be pursued and punished within a year and a day of the committal of the offence, which gives life to those laws for four years or more, instead of three.

p. 318. The numbers of the houses in the town of St. Hélier not to be altered but by authority, under a penalty.

p. 323. Law affording to the Attorney General summary power to levy fines in certain cases, provided the offender offers to pay the whole amount of the fine if it be fixed, or if it varies in amount the maximum penalty with the costs already incurred, in order to avoid the extra costs which would be chargeable if the suit were preferred before the Royal Court.

p. 339. Criminal process, to take place in or out of term.

p. 381. Law for the oyster fishery, fines on infraction.

p. 395. An Act to regulate the fisheries between the British Islands and France—fines or imprisonment.

p. 450. Law to regulate chimney sweeping.

p. 457. Law for the registry of births, marriages and deaths. Birth of a child to be declared to the registrar within 42 days, under a penalty of £50, excepting certain cases.

No corpse to be interred without due notice to the registrar, under a penalty.

The registrar liable to penalties for improper discharge of duty included in several penal clauses.

p. 449. Law for the levy of duties, on wines and spirits (import): many fines on infractions of it.

p. 525. Law on distilleries, with several penal clauses.

I have given the heads of these laws, or Orders of council, in compliance with the 2nd and 33rd questions of the Commissioners, in order to show over what offences the criminal law of Jersey extends.

I consider moreover that an application of the letter of the ancient law, the various orders of council, and Acts of Parliament sent to this island, whether in criminal or civil cases, to the now accumulated mass of precedents, if studied and adhered to, would furnish materials for a complete criminal code.

The *Grand Coustumier de Normandie*—Terrien, Godefroy, Basnage, Domat and Berault.

Lieutenant Bailly Le Geyt, an upright judge, and the most learned commentator on the laws of Jersey, whose works are now in the course of publication at the expense of the States, refers to them as commentators, but adheres to Rouillé, as the foundation of our law.

I hold our most undoubted law to be in the various orders of council, whether issued upon appeals from the decisions of the full court here, whether spontaneous from the Sovereign, whether upon petition, or the confirmation of a triennial or immediate law of the States.

But, in modern practice, the old writers have been greatly lost sight of: in the case of Marin, for the murder of Mary Ann Bethel, Coke, Blackstone, Hawkins, Lord Hale, and decisions of the Court of Queen's Bench were quoted: and the following French authors were referred to: Rouillé, Terrien, Domat, Merlin (*droit français*), Cottu, and the Code Napoleon. Yet it was stated on that trial, by the Advocate of the accused, that Sir John Dumaresq, when chief magistrate, never allowed a lawyer, whether for the Crown or for the accused, to open a book of English jurisprudence.

These deviations from the old authorities and practice have undoubtedly led to much uncertainty and confusion.

4. A party charged with a criminal offence is seized by the constable in his own parish, or by one of the *centeniers*. The constable by his oath of office is bound so to do. "Vous garderez et ferez garder la paix de sa Majesté, vous opposant, *et saisissant de fait* tous mutins, séditieux, larrons, homicides, et toutes autres personnes qui interrompent le cours de la paix publique, lesquels *vous présenterez* en justice pour etre punis, etc." See *Code de Loix* 1771, page, 296. Whereas the *centenier*, though he may seize an offender, is bound by his oath of office to report the case to the constable, "dont vous *informerez le connétable* afin qu'ils soient présentés en justice." The *vingteniers* and *officiers de connétable* are not charged by their oath of office to do more than obey, aid and assist the constable and centeniers. The offender is placed in custody; and a magistrate's order for his detention in gaol is obtained.

5 The Crown officer exercises summary jurisdiction, so far as to liberate a prisoner if he finds the charge against him to be groundless or incapable of proof.

The constable, in some cases of drunken riots, releases a person who may have been arrested by the *centenier* or police for violence, on payment of a small fine, which he is charged to levy for intoxication, swearing, or misconduct on the Sabbath.

p. 323. New code. A late law which was confirmed on the 9th March, 1844, to which I have alluded, gives the Attorney General certain summary powers.

6, The constable frames his report against the prisoner, after his arrest (see No. 4), which he delivers to the Crown prosecutor, with a list of witnesses. The prisoner is usually brought up on the first Court day, or on the Saturday following the arrest. The prisoner is then arraigned; if he has no advocate, the Court names one to conduct his defence. After hearing the charge he prefers his plea, which is recorded by the *greffier*, or clerk of the Court. In many cases the Attorney General allows bail to be taken by the sheriff, which the Court confirms. In either case,—a remand or a bail,—the Attorney General asks "permission d'informer," or leave to make his case good.

7. The Attorney General sends the list of the witnesses for or against the prisoner to the Viscount, or his Deputy, who issues summonses to them to appear in Court. The notice must be served 24 hours before its sitting. On a subsequent day, the prisoner is again presented before the bailly and two jurats (the inferior Court), to hear the evidence of the witnesses; the charge is again read; when the prisoner's advocate, on that and every subsequent day of trial, after hearing the charge, answers *(persiste)*, if the plea is not altered.

The prisoner may put any questions to the witnesses against him, "*à charge*," and has power to call any witnesses in his favour "*à décharge*." After each witness has declared all he knows, his evidence is read aloud to him, and he signs it. The whole is lodged "*au greffe*." The accused is remanded to gaol, or bailed; and the Attorney General asks leave "*d'informer plus outre*," to inform further. When the Crown prosecutor informs the Court that he has no more witnesses to call, the information closes. The prisoner must then plead, or may submit to the judgment of the Court, which often happens; in most cases he claims the benefit of a trial before the "*enditement*."

The case then comes before the full Court, composed *by the bailly and seven jurats* at least, or the lieutenant bailly and six jurats. The prisoner may challenge the members of the "*enditement*," formed by the constable, or, in his absence, a centenier (I have seen a vingtenier preside one), and 12 sworn police officers of the parish in which the crime was committed. The evidence against and for the prisoner is read to them in full Court, by one of the Crown officers; the accused makes his defence by his counsel, and the Attorney General his charge and reply; the bailly sums up: after which the *enditement* retires to confer, in charge of the sheriff, who takes all the written evidence and documents relating to the trial into the jury chamber. Such of the evidence as may seem doubtful is read afresh, and sifted. The foreman (the constable or *centenier*), when the minds of the jury are made up, collects their opinions; if unanimous, he announces that he will report the verdict; if otherwise, that they will each deliver their verdict in secret.

The sheriff then conducts the *enditement* into Court to the bailly and jurats who collect round the chief magistrate in order to receive the verdict; when each juryman states "*plutôt coupable qu'innocent*," or the contrary; if the majority declare him innocent, he is discharged; if guilty, he is criminally indicted; he may then submit to the judgment of the Court, or claim to be tried by the "*grande enquête*."

*The functionaries* who have sent the party to trial, that is, who have seized him, DO *frequently sit* on the *enditement*.

I do not agree with MM. Dumaresq and Hemery, in their "statement of the mode of proceeding and going to trial," &c., able and profound as that document is admitted to be, where, at page 42, they consider the "*enditement* to be *equally well adapted* for this preliminary step, in a criminal suit, as a grand jury in England," because their duties were originally the same. Now, the "*enditement*" does not find the bill at all; *it tries* the prisoner, and condemns or acquits him. The grand jury in England knows nothing of the case but what is brought before it: here some of the "*enditement*" in many cases have assisted to seize the offender; they may have received blows, or been assaulted, which I have witnessed, and are therefore more or less prejudiced against him. Again, should the offender be a personal friend of the police, or inimical to them, a leaning either way must take place: the country police should try the town cases, and the police of town, the cases of the country.

When the prisoner appeals to the grand jury, or *Grande Enquête*, he is remanded back to prison. As soon as may be, sometimes in two days, the Attorney General secretly summons eight persons or more from the parish in which the prisoner was seized, or the crime was committed, and eight from two of the neighbouring parishes, who are unknown to the prisoner, late on the evening preceding the day of trial, to form the *Grande Enquête*. These are usually men of the first consideration in their respective parishes. The prisoner is brought to the bar, and, on hearing the names of the jurymen called, may challenge them for cause. When 24 are unchallenged, they raise their right hand and are sworn. The trial proceeds, precisely as before the "*enditement*:" the grand jury retires with the sheriff to the jury chamber, where the most patient investigation, when necessary, takes place; doubtful evidence is sifted; and, when, as before, prepared, the foreman collects their opinions. If *five* out of the twenty four declare him to be innocent, and *all* the others guilty, he is absolved. If twenty or more declare him to be guilty, they proceed, in charge of the sheriff, to the chief magistrate, as the petty jury did, and severally declare their verdict. When unanimous, the foreman announces "Que la Grande Enqueste trouve le prisonnier à la barre plutot [illegible] que [illegible] du crime dont il est accusé."

It will be seen that the criminal code of this island, in a case of life and death, is probably the most humane in the universe: for it may happen that the "*enditement*" of 13 men, and 19 men of the "*grande enqueste*," all these last men of substance and considerable education, find a man *guilty*; yet *five* men with tender consciences, or religious scruples as to the punishment of death, outweigh the opinions of thirty two men.

Instances have been known where jurymen altered their verdict in going down stairs into Court.

All this practice is derived from the "Grand Coustumier," "de Suyte de Meurdre," Fo. xcij., where we find "que en enqueste de crime de roberie ou de larcin ou d'aultre malfaçon on a accoutumé de prēdre de trois paroisses: c'est assavoir de celle où l'accusé a converse, et celle où il fit la roberie, et de la prochaine paroisse de celle où il a converse," &c. It prescribes the same formality in cases of murder, with exceptions in cases of foreigners.

It also prescribes the secret mode of delivering the verdict. "Le bailly les doibt prendre secretement devāt quatre chevaliers, et demander à chascun par soy ce qu'il scet de la vie à cil qui est accusé et de ses faicts, et ce qu'il en croit." Also, "Que il fault vingt jureurs à ung

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acord pour condemner l'accusé." The jury were to keep their verdict secret, because of the hatred and inconvenience which might otherwise ensue.

8. By the Attorney General, on the report of the constable or his *centenier*.

Criminal cases, when once instituted, can only be stayed by the prisoner on change of plea, or by the Court in some cases.

On the 23rd November, 1836, Thomas Wilson was indicted for house breaking and robbery. There were two robberies charged against him: his advocate put in a plea that the Court could not consider the second charge, as he was accused twice for the same crime. The Court ruled that the Attorney General should abandon one of the charges. A plea in bar, "autrefois acquit," was then put in by advocate Hammond, as a prisoner "cannot be put in jeopardy twice for the same crime:" which was overruled.

Where an offender is very young, the Attorney General sometimes, for a first offence, recommends his being given up to his parents; in case of a repetition of the offence, the former would weigh against the prisoner.

9. Answered by replies six and eight; and the charge cannot be altered by the crown prosecutor after it has been recorded by the *greffier*. Every opportunity and any reasonable time is allowed to the prisoner to rebut any evidence which the Crown prosecutor may advance, to remodel or improve his defence.

10. It is sent to proof; and the Crown lawyer is "permis d'informer."

11. The same.

12. The same.

13. The same: in either case the proof establishes the guilt or innocence of the party.

14. Answered in reply 6.

15. The Attorney General sends a list of the witnesses to the sheriff, who issues a summons in writing to each, under his signature or that of his deputy, twenty four hours before the trial. See the forms annexed.

Witnesses can be compelled *by the Royal Court*, not by the mere summons, to attend and give evidence under pain of imprisonment, and to produce any documentary evidence the Attorney General might deem to be indispensable, at any period of the trial before the defence.

If any material witness, either for or against the prisoner, is on immediate unavoidable departure, or confined by severe illness, his evidence is taken in writing by the viscount, in the presence of the Crown prosecutor, the prisoner, and his counsel, who cross question the witnesses as they see fit.

16. Answered by reply 6.

17. When it is given.

18. When the case for the Crown has closed.

19. He may cross question the witnesses to any extent; and their evidence is taken in writing and added to their previous evidence.

20. The Crown prosecutor may call witnesses to the very last moment, the object being to obtain the whole truth.

21. All the evidence is carefully taken down by the solicitors, whose turn of duty it may be; it is then read to the witness, who, after verifying it, is desired to sign it by the bailly.

I have frequently seen a witness correct the sense, so as to give his own meaning.

22. The whole written evidence is lodged "au greffe" in charge of the *greffier*, to be referred to by the lawyers, Court, or juries. I have never heard of a case where it was pretended the evidence had not been correctly taken, because the Attorney General on the one hand, and the prisoner's counsel on the other, are on the watch to see that every word is taken. They vouch for it, as it were.

23. The advocate to the prisoner is allowed every latitude, up to the moment when the Crown prosecutor draws his conclusions.

24. The Attorney General is heard last; and there is no reply, unless as a point of explanation; nevertheless, in Marin's case, *the reply* lasted three quarters of an hour.

25. The Court decides the law. In Marin's case, for the murder of Mary Ann Bethel, the "Grande Enquête," of 24 of the most considerable men in their parishes, decided the fact "que le prisonnier à la barre est coupable d'homicide sur la personne de Mary Ann Bethel, *sous des circonstances aggravantes*." This verdict saved his life. Though the judges had no precedent for homicide "*sous des circonstances aggravantes*:" but the charter of Henry 7th, "no murderer, thief or banished man to be suffered to remain in the castle or the island," besides orders of council confirming sentences of the Royal Court, made the sentence of transportation in this case perfectly legal. The jury decide the fact: and the Court follow precedents, by registered Acts of Parliament and orders of council, or the codes, for the law.

26. Judgment is awarded by the bailli after consulting the jurats.

27. The Court, or any member of it, "desiring to be better informed to the end he may give better judgment in it, the *judge* shall cause him to receive satisfaction." Order of 19 May. 1671.

28. Much information will be obtained by reading the report of MM. Hemery and Dumaresq, and that interchanged with those gentlemen, by the then Attorney and Solicitor General of Jersey, of which I do myself the honour to forward a copy, for the use of Her Majesty's Commissioners.

Some singular cases which I have met with, I annex.

29. Strictly speaking, there is no appeal from a sentence of death: but the Court always allows time for an appeal to the Sovereign, by fixing the execution for a distant day.

In the cases of homicide and chance medley, which I have quoted, of 1689, the Sovereign directs reference to be made to the King in Council until his pleasure should be known.

30. In cases of imprisonment, the execution takes place from the day of sentence to the expiration of the sentence, unless the last day should be Sunday, when it is usual to give the prisoner the benefit of that sacred day.

In cases of banishment the prisoner, if possible, is sent to his native place or parish with a sheriff's pass.

Transportation beyond the seas takes place under the Order of Council I have quoted, and has been ratified by others; with a warrant from the Secretary of State for the Home Department.

Execution is usually ordered for the Saturday following the delivery of the sentence of death, when the sheriff would proceed to it; but, as before observed, time is always allowed to afford the criminal a chance of a pardon,

By the formation of a Prison Board, in 1837, under the same regulations nearly as those in England and Wales, it has been decided, by the Secretary of State for the Home Department, that executions, which formerly took place with much parade on Gallows Hill, attended by a multitude who attended them rather as a spectacle and a show than a scene to inspire awe, are in future to take place over the prison wall, facing one of the back streets.

The sheriff sees the sentence carried into effect on the judgment or act of the Court, an authenticated copy of which is his sufficient warrant.

Flogging in the street, and the pillory, of which I have quoted precedents, have become obsolete. Flogging is sometimes awarded to boys, and is carried on in presence of the surgeon to the prison and sheriff or his deputy; the surgeon is the judge how far the punishment may proceed.

31. In the code of laws I enclose, are the oaths required in the various processes I have described.*

32. The Bailly, the Queen's Procureur or Attorney General, the Vicomte or Sheriff, called Viscount in the Queen's Patent granted to me, the Queen's Advocate or Solicitor General, are all appointed by letters patent; the Bailly and Viscount during pleasure, the two others for life.

The Jurats are elected for life by the rate payers, an almost universal suffrage in the 12 parishes.

The constables and centeniers are elected by the same, in their respective parishes, to serve for three years.

The Bailly, Crown officers, and the jurats, may be removed for misconduct by the Crown; all the others by sentence of the Court only.

33. After much consideration of the criminal law of Jersey, I consider that, although it is not absolutely defined, it is still more merciful and mild than if it were so; the latitude which is left in the breast of the magistrate leans to the side of mercy; the jurats here are constantly on the side of the accused, with a stranger perhaps too much so.

I object, as I have stated, to the constable and officers forming the *enditement*. I consider they should not, at all events in their own parish, or where *any one* of them may have assisted in taking up the accused.

With respect to the formation of the Court, if our present system is to continue (though I admit it to be unsuited to the age in which we live), if a positive adherence to our charters, those of King John, the Henrys and Elizabeth, is insisted on, they should be fairly carried out, the judges should be elected by the Queen's Ministers and the states, according to the recommendation of Messieurs Osgoode, Swabey and Hobhouse, the last Commissioners who made their Report in 1812.

The reproach which is now levelled at the Court, that it is named through party influence, by persons inadequately taxed, or scarcely in some cases taxed at all, for they may not have paid a rate, would be got rid of, and the fair chain of representation would be kept up as it is in Guernsey.

This would be a return to our original constitution, which existed 400 years, the innovation having occurred in 1605. It would also be of manifest assistance to the Court, and greatly further the ends of justice, to restrict the Crown officers to official duty, paying them a proper salary for the sacrifice of their private practice, which they would necessarily make, instead of their being allowed to plead private causes in opposition to each other, sometimes even cases "en ajonction," where the Solicitor General may plead against his senior.

The following plan has been considered by an eminent authority an easy and practical mode to amend, without destroying, the constitution of Jersey.

"Rough draft of a plan for some modifications in the Royal Court of Jersey without disturbing its constitution."

A fixed salary to be given to the Bailly, Attorney General, Viscount, Solicitor General, Greffier or Recorder, Registrar, the Deputy Viscount, and the two Denunciators.

All their present fees of office, excepting consultation fees, to be paid over to the Queen's receivers, or to a sworn officer for their collection.

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* See Page 296 of the Code 1771.

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All patronage to be given up to the Crown for the appointment of these officers in consideration of receiving the following salaries.

| Present Salary £ | Officers. | Increase. £ | |
|---|---|---|---|
| 300 | Bailly . . . . | 1000 | with allowance for an office and clerks. |
| 100 | Attorney General . . | 600 | |
| 150 | Viscount . . . . | 500 | |
| 50 | Solicitor General . . | 500 | on the retirement of the present officer, or their consent to the change. |
| .. | 1st Deputy Viscount . . | 200 | |
| .. | 2nd ditto ditto . . | 100 | |
| .. | 1st Denunciator . . | 200 | |
| .. | 2nd ditto . . . | 150 | |
| .. | Registrar . . . | 300 | |
| 45 | Greffier . . . . | 500 | |
| £645 | | £4050 | |

The amount of fees now received by those officers is supposed to be about 4000*l.* yearly: but, as one full third, if not half, more would be raised by an authorized person, which cannot be collected as the business is now carried on, a large profit would remain to the Crown, without taking into account the salaries now paid, nor the large revenue which will fall in on the demise of the Governor of Jersey.

The Crown officers should be restricted to performing the following duties. As public prosecutors; advisers to the Crown; and in every cause, as the "Procureurs du Roi" in France, stating the law of the case to the Court; then drawing their "conclusions," as a guide to the jurats.

By such a course the jurats, who, in nine cases of ten, have received no legal education, would no longer be, as I have frequently felt, perplexed by the Crown lawyers, one pleading a case "en ajonction" for one side, while the other was defending the adverse party, each giving a different version of the same law.

By this alteration, instead of being misled, the jurats would be instructed and guided.

It may be objected that the jurats do not always now follow the law as it is laid down by the Crown lawyers; how should they do so under the circumstances I have described? But, if it were felt that the sole duty of these officers was to enlighten the Court, a vast confidence in their opinions would be suddenly established, the jurats would feel the advantage of a support which they require, the public would possess the double guarantee of a sound legal opinion and the check of the public press, if the Court would venture to set aside the law. It would seem that, without aiming at a complete change, this reform would have a beneficial tendency, by giving dignity to the tribunal, with an ultimate confidence in its decisions, which would neces sarily diminish the appeals to the Sovereign in Council.

Hence, the jurats being elected by the terms of the constitution of King John, all the officers of the Court paid by the Crown (and removable at pleasure) for the mere performance of public duties, a greater dignity would be imparted to the bench.

This plan is suggested in mere deference to the feelings of the people, who are attached to their old venerated constitution. But, if one in harmony with the spirit of the age were in contemplation, the most proper form of a Court in Jersey would be, an open bar, from which to select three judges, natives, or such as have practised at that bar, with the usual officers, to determine all matters, civil and criminal. All appeals to be heard in the Channel Islands by the circuit judge before or after his visit to Winchester. Some of the present jurats to act as justices of the peace for the trial of petty cases, and as in the Courts of Requests, for which duties they would be fully qualified. This system would be more in the spirit of the age: but the people of Jersey are scarcely yet prepared for so entire a reform, though it is believed that a great many of the gentry, farmers and intelligent tradespeople are so.

Jerseymen, as a body, are attached to their ancient and venerated (for, when justly administered, it is a wise) constitution; under it they have risen to singular happiness, contentment and virtue; they are peaceable, industrious, temperate, brave and wealthy; they are thankful to Divine Providence for having so long enjoyed signal blessings. Thus they have cause to fear that any great or sudden change might be for the worse.

I have, &c.,

J. LE COUTEUR, *Viscount of Jersey.*

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[Here followed a translation of a document, the original of which is substituted.]

*The Constitutions of King John.*

Inquisitio facta de servitiis, consuetudinibus et libertatibus, Insul. de Gerese et Guernese, et legibus constitutis in Insulis per Dominum Johannem Regem, per Sacramentum Roberti Blondel, Radulphi Burnel, &c., qui dicunt, &c. Rot. Hen. 3.

Constitutiones et provisiones constitute per Dominum Johannem Regem, postquam Normannia alienata fuit.

I. Imprimis, constituit duodecim coronatores juratos, ad placita et jura ad coronam spectantia custodienda.

II. Constituit etiam et concessit, pro securitate Insularium, quod ballivus de cetero per visum dicterum coronatorum poterit placitare, absque brevi, de novâ disseisinâ factâ infra annum, de morte antecessoris infra annum, de dote similiter infrà annum, de feodo invadiato semper, de incumbreio maritagij, &c.

III. Ii debent eligi de indigenis insularum, per ministros Domini Regis et optimates patrie; scilicet, post mortem unius eorum, alter fide dignus, vel alio casu legitimo, debet substitui.

IV. Electi debent jurare, sine conditione, ad manutenendum et salvandum jura Domini Regis et patriotarum.

V. Ipsi duodecim in qualibet Insulâ in absentiâ justiciariorum, et unà cum justiciariis cum ad partes illas venerint, debent judicare de omnibus casibus in dictâ Insulâ qualitercunque emergentibus, exceptis casibus nimis arduis, et si quis legitimè convictus fuerit a fidelitate Domini Regis tanquam proditor recessisse, vel manus injecisse violentas in ministros Domini Regis modo debito officium exercendo.

VI. Ipsi duodecim debent emendas sive amerciamenta omnium premissorum taxare, predictis tamen arduis casibus exceptis, aut aliis casibus in quibus secundum consuetudinem Insularum merè spectat redemptio pro voluntate Domini Regis et curie sue.

VII. Si Dominus Rex velit certiorari de recordo placiti coram justiciariis et ipsis duodecim agitati, jnsticiarii cum ipsis duodecim debent recordum facere; et de placitis agitatis coram ballivo et ipsis juratis, in dictis Insulis, ipsi debent recordum facere conjunctim.

VIII. Quod nullum placitum infra quamlibet dictarum Insularum coram quibuscunque justiciariis inceptum debet extra dictam Insulam adjornari, sed ibidem omnino terminari.

IX. Insuper constituit quod nullus de libero tenemento suo, quod per annum et diem pacificè tenuerit, sine brevi Domini Regis de Cancellariâ, de tenente et tenemento faciente mentionem, respondere debeat vel teneatur.

X. Quod nullus pro feloniâ damnatus extra Insulas prædictas hereditates suas infra Insulas foris——facere potest, quin heredes sui eas habeant.

XI. Item, si quis forisfecerit, et abjuraverit Insulam, et postea Dominus Rex pacem suam ei concesserit, et infra annum et diem abjurationis revertatur ad Insulam, de hereditate suâ plenarie debet restitui.

XII. Item, quod nullus debet imprisonari in castro, nisi in casu criminali vitam vel membrum tangente, et hoc per judicium duodecim coronatorum juratorum, sed in aliis liberis prisonis ad hoc putatis.

XIII. Item, quod Dominus Rex nullum prepositum ibidem prohibere debeat nisi per electionem patriotarum.

XIV. Item, constitutum est, quod Insulani non debeant coram justiciariis ad assisas capiendas assignatis, seu alia placita tenenda, respondere, antequam transcripta commissionum eorundem sub sigillis suis eis liberentur.

XV. Item, quod justiciarii per commissionem Domini Regis ad assisas capiendas ibidem assignati non debent tenere placita in quâlibet dictarum Insularum ultra spatium trium septimanarum.

XVI. Item, quod ipsi Insulani coram dictis justiciariis post tempus predictum venire non tenentur.

XVII. Item, quod ipsi non tenentur Domino Regi homagium facere, donec ipse Dominus Rex ad partes illas, seu infra ducatum Normannie, venerit, aut aliquem alium per literas suas assignare voluerit in iisdem partibus, ad predictum homagium nomine suo ibidem recipiendum.

XVIII. Item, statutum est, pro tuitione et salvatione Insularum et Castrorum, et maxime quia Insule propè sunt, et juxta protestatem Regis Francie et aliorum inimicorum suorum, quod omnes portus Insularum benè custodirentur, et custodes portuum Dominus Rex constituere precipit, ne damna sibi et suis eveniant.

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1.—*Form of List of Witnesses sent to the Sheriff by the Attorney General, and the Sheriffs' Record.*

H. Charles Quesnel, Ecuyer
,, Joseph Dickson, Ecuyer.
,, Monsieur Jean Chevalier.
,, Pierre Le Sueur, Ecuyer.
S. François Godfray, Ecuyer.
H. William Vesconte Le Quesne, Gent.

J'ai signifié aux susnommés de comparaître en Cour, jeudi le 26ème jour de mars, 1846, instance du Procureur Général de la Reine, pour informer vers Marie Le Noble alias Marie-Anne Le Noble, femme de Pierre-Marie Le Gendre, et séparée de lui quant aux biens, suivant à l'acte. De quoi j'ai donné ce record.

(Signé) J. LE COUTEUR, *Vicomte.*

*Remarks:—*

If a witness is ill, a medical certificate is required to dispense him from appearing before the Court, or he may send a person to declare, upon oath, that his health prevents him from attending.

The summons must be served twenty four hours at least previous to the sitting of the Court.

If any of the witnesses are absent from the Island, it is noted in the return by the officer who has served the summons.

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2.—*Form of Summons to a Witness.*

Charles Quesnel, Ecuyer,

Je vous signifie de comparaître en Cour, jeudi le 26ème jour de mars, 1846, instance du Procureur Général de la Reine, pour informer vers Marie Le Noble alias Marie-Anne Le Noble, femme de Pierre-Marie Le Gendre, et séparée de lui quant aux biens, suivant à l'acte.

H. (Signé) J. LE COUTEUR, *Vicomte.*

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*Precedents of some Remarkable Cases.*

1556, Dec. 17.—John Vaultre pleads guilty of theft: flogged, banished for life.

1631, Jan. 26.—Moyne Nicolle, for theft: condemned to be hanged.

1661, Oct. 24.—Sara Lucette, charged with poisoning her mother, and witchcraft; found guilty by the *enditement;* to be tried by the Grand Jury, and obstinately refuses; persists in submitting to the judgment of the Court without confessing her crime: banished for life.

JERSEY.

*Answers to Questions.*

SERIES I.

J Le Couteur, Esq., Viscount.

1663, June 4.—Phil de Gruchy, accused of poisoning Marie Parque; refuses to be tried by the "Grande Enquête" of 24 men: the Court condemns him to be hanged.

1667, May 31.— , charged with sacrilegious theft; discharged for want of evidence by the *enditement:* but, for several previous thefts and offences, flogged and to have his ear marked.

1683, June 7.—Marie Hamesel, accused of parricide; having altered her plea, declines to submit to the judgment of the Court, and claims to be tried by the "Grande Enquête" of 24 men; the "Grande Enquête" object that, as she has not been tried by the *enditement*, she must first be so tried by the constable and officers of St. Heliers: is afterwards condemned to be hanged, and her body to be burned.

1690, Feb. 12.—A remarkable case; military offence. A corporal guard and sentry fined for striking and ill treating a jurat of the Royal Court, Jean de Carteret, Gent.

1691, Sept. 19.—On the report of 24 men, Thomas Rony found guilty of perjury: remanded to jail, and judgment deferred.

1695, May 10.—Mr. Noel Giles and Mr. Phillipe Chantellon having been seen with Josué Giles, charged with murder, and suspicions hanging over them owing to their relationship, as they might aid him to escape: sent to jail until further orders.

1713, June 4.—Joseph Marie François de Rospice (*étranger*), found guilty of forgery: to have the tip of his ear cut off, and to be placed in the pillory on three successive Saturdays, afterwards banished for life.

1719, May 6.—Abraham Piton, sent to prison for libelling the Lieutenant Governor (*et permis aux officiers du Roy d'informer*).

1719, May 21.—The said Piton, considering the enormity of his offence, on his knees to ask pardon of God, the King, and the Court, also the party offended; to hold his own nose, and to acknowledge that he had maliciously lied; to be fined and imprisoned, with fetters to his ancles, one month on bread and water.

1729, May 13.—Phil. Romeril submits to the judgment of the Court.

1734, Jan. 21.—Mr. Jean Gasnier, junr., Jean le Gresley, and Pierre Hacqueil, charged with Pierre Perréa as participators, guilty of cause of murder and homicide on the person of François Hubert, *fils* Philippe, the 4th February, 1731; found rather innocent than guilty.

1742, Oct. 5.—Jean Gasnier, charged with the murder of his father in law. Proceedings stayed, previous to the sitting of the Petty Jury, *enditement*, owing to his *derangement*, and the case referred by the balance of the Lieutenant Bailly to the Sovereign in Council.

1764, May 18.—Jean le Cornu, tried by the Grand Jury; found guilty of altering a receipt book (*livre de quittances*): condemned to the pillory.

1769, May 13.—Amice de Caux and Esther Amy, found guilty "*du crime de débauche;*" by the *enditement*, alter their plea, and submit to the judgment of the Court: condemned to the pillory, and the woman to be banished three years.

1779, March 9.—Anne de la Cour, wife of John Lambert, seized; charged with theft by the constable of St. Lawrens; was remanded the 17th April, the 24th July, and on the 31st July; was found guilty of theft by the said constable and *enditement* of St. Lawrens, and claimed the benefit of trial by the Grand Jury.

1779, July 31.—Phil la Gerche and Marie Borne, his wife, found guilty of keeping a disorderly house and a brothel, and selling liquor without a license; remanded to gaol till the ensuing Saturday: to be placed in the pillory from 10 A.M. to 12, and condemned to all costs. The said La Gerche, having two children (imbecile) by a former wife, who had property of her own, the King's Procureur to call in their relatives to place them a *curateur* (guardian with extensive powers).

1779, Sept. 11.—Charles Hamon, seized by Centenier Boaton, of St. Hélier; presented in Court by the constable of the said parish for theft; pleads guilty, and he may be useful in his Majesty's service: is banished for five years.

1785.—Matthew Alexandre, a printer, seized for a libel on the Lieutenant Bailly, and admitted to bail; his witness, J. B. Constant, sent to jail for contempt of Court; on the 17th instant remanded back to jail till the following Thursday, owing to the death of the greffier's wife.

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No. 25.

Francis Godfray, Esq., Greffier. 20 July, 1846.

*Answers of Francis Godfray, Esq., Greffier of the Royal Court of Jersey, to the first series of questions.*

1. I was attorney of the Royal Courts, from the year 1801 to 1812, when I was appointed greffier, and have ever since filled the duties of that office.

2. The Royal Court is the only tribunal exercising criminal jurisdiction in the island. Its jurisdiction was established by a charter of King John, when the island was separated from the duchy of Normandy. It extends over all offences and crimes, except high treason.

3. The *Vieux Coustumier de Normandie*, commented upon by Rouillé and subsequent authors, was formerly the authority principally relied upon in the discussion of questions arising upon the criminal law. It cannot now be called an authority, many of its enactments being no more in use, and others greatly modified on the principle of the English law.

4. When it is suspected that a party has committed an offence, the constable of the parish, or one of the officers next under him (the centeniers), upon receiving information of the offence, proceeds, with the assistance of his subordinate officers, to arrest the party suspected, of which he gives information to the bailiff or chief magistrate, who, if he finds sufficient ground for an accusation, gives a written order to the constable, addressed to the gaoler, authorizing him to detain provisionally in his custody the suspected party: and, the next court day or as soon as possible, the constable presents him before the court, with a report of all the circumstances which have come to his knowledge concerning the suspicion.

5. When the accused party is presented before the Royal Court, and admits the facts laid to his charge, the court exercises summary jurisdiction: and, if he denies the facts and the accusa-

tion is not of sufficient gravity to be sent to a jury, the court orders evidence to be heard; and after hearing such evidence it deals summarily with the case.

6. Where there is no exercise of summary jurisdiction, when the constable presents the accused party before the court, with his report of the informations that have come to his knowledge on the subject, Her Majesty's Attorney General forms his accusation on that report, after which the accused party pleads to the accusation. If he does not plead guilty, he is, according to the circumstances and nature of the case, either sent to prison or admitted to bail for his reappearance, under a penalty fixed by the court.

7. The Royal Court is the only tribunal authorized to take cognizance of accusations, either summarily or otherwise. To constitute a court, the bailiff and two jurats must attend, and may decide on summary accusations. The court, so constituted, is also competent to proceed in all stages of the accusation, until the case comes before the first jury, or *enditement*, when no less than seven of the twelve jurats, with the bailiff, must be present. The bailiff who has given the order for the detention of the accused party is capable of acting as member of the court.

8. The proceedings against the accused party are instituted by Her Majesty's Attorney General, who may abandon the proceedings at any stage, if he does not find the accusation supported by sufficient proofs. This abandonment has the same effect as an acquitment by a jury.

9. The charge against the party accused is put into a definite form in writing, when he is for the first time presented before the court. The accuser cannot afterwards vary the form or substance of the charge.

10. If the party charged admits the facts alleged against him, but denies their relevancy to support the charge, the Royal Court decides whether they are relevant.

11. If the party charged denies the facts alleged against him, the Attorney General is authorized by the court to call witnesses on a future day.

12. If the party charged confines himself to a denial of the relevancy of the charges, he is not thereby concluded as to the facts.

13. If the party charged confines himself to a denial of the facts, he is not thereby concluded as to their relevancy.

14. The party charged is entitled to the assistance of one or more advocates, and one or more attorneys chosen by him. In cases where the party accused is unable to defray the expense of legal assistance, his legal advisers act gratuitously. Though the accused may retain several legal advisers, only one is allowed to speak in his defence.

15. After the accused party has been for the first time presented before the court, the Attorney General gives the names of his witnesses to the summoning officer, who warns them to attend at court, the day or days appointed to hear their depositions: the accused party causes the names of his witnesses to be given to the Attorney General, who has them summoned to attend in the same manner as his own. If the witnesses do not attend, the court orders them to be arrested by the *vicomte* or *dénonciateur*, and produced before the court.

16. Evidence is first received in presence of the court, the next time the accused party is brought forward, after his first pleading to the accusation; this takes place in his presence, and that of the Attorney General.

17. The party accused is present in court when the evidence is produced against him.

18. The party accused is allowed to produce evidence to meet that produced against him, generally on a future day, previous to the pleadings before the last *Jury* or *Grande Enquête*. Should the case not have been sent before a jury, the evidence of both parties are heard on the same day, the witnesses to support the charge being first heard, and afterwards those of the accused.

19. The party accused is allowed to question the witnesses produced against him, immediately after they have answered the questions put to them by the Attorney General.

20. Fresh evidence may be produced, either for or against the party accused, at any stage previous to the calling of the first *jury* or *enditement*: but in some cases fresh evidence has been further allowed to the accused party, in presence of the first and even second jury; but the accuser is not allowed to do so.

21. When the accusation is of a sufficient gravity to be submitted to a jury, the whole of the evidence received at the respective stages of the proceeding is taken down in writing; but, for offences which are not of a serious nature, the witnesses are heard *vivâ voce*, and the Court gives judgment.

22. The evidence which is taken down in writing is afterwards read to the first *jury* or *enditement*, composed of the constable and twelve of his officers, and also to the last jury or *grande enquête*, which is composed of twenty four men selected by the Attorney General. The depositions being taken in writing before the Court, in presence of the accuser and the prisoner and his counsel, neither party is allowed to give proof that the written evidence does not correctly represent the whole of what was deposed to, as either party is allowed to have any error corrected at the time the evidence is taken down in writing.

23. The counsel for the party charged is allowed to be heard on questions of fact and law, and in examining and cross-examining witnesses.

24. The Attorney General has the privilege of being heard the last.

25. The bailiff and jurats are the functionaries who decide both on the law and facts in summary cases; and in other cases they decide on the law only, and the jury on the fact.

26. Judgment is awarded by the Royal Court.

27. The court has the power to adjourn or suspend the proceedings at any stage, in cases where the accused party, by illness, or his counsel, from reasonable cause, cannot attend, or from other unforeseen circumstances which the court finds sufficient.

28. It is sufficiently detailed.

JERSEY.

*Answers to Questions.*

SERIES I.

Francis Godfray, Esq., Greffier. 20 July, 1846.

29. When the pleas either of the Attorney General or of the accused party are orveruled by the inferior number of the court, composed of the bailiff and two jurats, the same question may again be brought forward before the full court, composed of the bailiff and not less than seven jurats on the day the first jury is called.

30. When judgment is finally given against the accused party, it is the duty of the *Vicomte* to see that the sentence is put into execution.

31. Enclosed are the forms used at the various steps of the proceedings with the oaths taken by the witnesses, (No. 1.), as also that of the bailiff and of the jurats when first admitted to office, to which is added the oath of the men composing the last jury or *grande enquête*. To the first jury or *enditement* no oath is administered, it being considered that they are acting upon the oath they took at their admission into office. Enclosed is also the form of the oath taken by the constable and his subordinate officers. (No. 2.)

32. The bailiff is appointed by Her Majesty during life or pleasure. The jurats are elected for life by the rate-payers in the island; the constables, as well as the centeniers, their next subordinate officers, are elected by the rate-payers in their repective parishes for three years. The other subordinate officers under the constable are elected by the parish assembly, composed of the principal inhabitants and the constable and the other officers under him. They remain in office, viz.: the *vingteniers* three years; the *officiers du connétable* of the parish of St. Hélier four years; and those of the other parishes seven years. Either of the above named public officers, the bailiff and jurats excepted, may be removed by the Royal Court for misdemeanor, or at their own request, by infirmity or old age; but the jurats, who are elected for life, cannot obtain their discharge, or be removed, without an order from Her Majesty in council.

33 and 34. These questions are answered by the enclosed draught of a bill on the mode of proceeding in criminal causes, which was discussed in the States on the 26th August, 1836, and which has remained dormant ever since (No. 3). And also by the accompanying extract of the statement transmitted to His Majesty in council, in the year 1790, by James Hemery, Esq., one of the jurats of the Royal Court, and John Dumaresq, Esq., then an advocate, and subsequently lieutenant bailiff, on the mode of proceeding and of going to trial in the Royal Court of this island, in all causes, criminal, civil and mixed. (No. 4.)

*Jersey, July* 20, 1846. FRANCIS GODFRAY.

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1.—*A Pierre Le Sueur, Esq., Connétable de la paroisse de St. Hélier.*

MONSIEUR,

Lundi, le 25 du courant, je fus informé, vers les dix heures du soir, qu'un rapt avoit été commis sur une jeune fille demeurant dans Halket Street. Je me rendis de suite, accompagné de Mons. Henry Luce Manuel, officier du connétable, chez Mrs. Raymond, qui tient une auberge dans la dite rue, et chez laquelle on m'avoit informé que je trouverais l'individu qui avoit commis le rapt, ainsi que la jeune fille qui avoit du être violée. Mons. le Docteur Harding, médecin accoucheur, se trouvait chez Mrs. Raymond lorsque j'entrai; et il me dit qu'il avoit été appelé pour examiner et donner ses soins à Caroline Elizabeth Raymond, fille de la susdite Mrs. Raymond, et qu'il craignait que cette enfant, âgée de dix ans et quelques mois, avoit été victime d'un attentat sur sa personne. Accompagné du Docteur Harding, je procédai à interroger la dite Caroline Elizabeth Raymond; et elle me déclara que le Vendredi précédent, pendant que sa mère était absente de la maison, le nommé Philippe Le Geyt, un des locataires de la dite maison, l'avoit entraînée contre sa volonté dans un appartement qu'elle me désigna; et que là, s'y étant enfermé avec elle, il avoit commis un assaut grave sur sa personne et avoit cherché à la violer. Après avoir reçu la déclaration de la dite Caroline Elizabeth Raymond, je questionnai Philippe Le Geyt, l'individu qu'elle accusait; il nia avoir eu aucune communication criminelle avec la dite Caroline Elizabeth Raymond: mais je crus, d'après les faits et déclarations de cette jeune fille, devoir saisir le dit Philippe Le Geyt, et avec la sanction de Ph. Le Gallais, Esq, Juré Justicier, le loger en prison. De tout quoi j'ai l'honneur de vous faire ce present rapport.

(Signé) THOMAS SOREL, *Centenier.*

*St. Hélier, ce* 29 *Août*, 1845.

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*A Messire Jean de Veulle, Chevalier Bailli, et à Messieurs les Jurés Justiciers de la Cour Royale de l'île de Jersey.*

J'ai l'honneur de présenter le rapport d'autre côté, ainsi que le dit Phil. le Geyt, afin qu'il en soit ordonné.

(Signé) P. LE SUEUR, *Connétable de St. Hélier.*

*Délivré en Cour Séante, ce* 4 *Septembre*, 1845.

1845, *le* 4 *Septembre.*

Philippe Le Geyt, saisi de fait et présenté en justice sous l'accusation portée vers lui en conséquence du rapport du centenier Sorel de la paroisse de St. Hélier, a sur ce plaidé et fait sa declaration, savoir, qu'il n'est pas coupable.

1845, *Septembre* 19.

Phil. Le Geyt a persisté dans sa déclaration précédente.

1845, *Octobre* 2.

Philippe Le Geyt a persisté dans sa déclaration précédente.

1845, *Novembre* 21.

Phil. Le Geyt a persisté dans sa déclaration précédente.

1845, *Novembre* 26.

Philippe Le Geyt a persisté dans sa déclaration précédente.

*A la Cour Royale de l'île de Jersey.*

L'an mil-huit cent quarante-cinq, le quatrième jour de Septembre. Philippe Le Geyt, saisi de fait par le centenier Sorel de la paroisse de St. Hélier, et présenté en justice par le connétable de la dite paroisse, a été accusé par le Procureur Général de la Reine, en conséquence du rapport du dit centenier, d'avoir, Vendredi 22 Août, 1845, ou vers ce tems là, commis un assaut violent sur la personne de Caroline Elizabeth Raymond, jeune fille, âgée de dix ans ou environ, avec l'intention de commettre le crime de viol sur la personne de la dite Caroline Elizabeth Raymond. L'accusé a sur ce plaidé et fait sa déclaration, qui a été rédigée et logée au greffe ; et il a été constitué prisonnier sous la dite accusation, à l'instance du dit Sieur Procureur Général de la Reine, auquel il est permis d'informer. Etant le rapport du dit centenier demeuré logé au greffe.

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*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le dix-neuvième jour de Septembre. Philippe Le Geyt, convenu à l'instance du Procureur Général de la Reine, pour ouïr dépôt d'informateurs sur l'accusation qui lui est faite en conséquence du rapport du centenier Sorel de la paroisse de St. Hélier, le tout selon que plus au long est contenu au dit rapport et en l'acte de la Cour daté l'an 1845, le 4 jour de Septembre. M. Thomas Sorel, Caroline Elizabeth Raymond, Philippe Harding, écuyer, George Matthew Jones, écuyer, Mse. Sarah Dowdney, femme de Mr. James Raymond, M. George Coutanche, M. Henri Luce Manuel, Mse. Anne M'Carthy, à la cause à informer et ouïr record d'officier. Les dits témoins ont déposé par serment, et leurs dépositions ont été rédigées et logées au greffe. L'accusé a été renvoyé en prison ; et il a été permis au dit Sieur Procureur Général de la Reine d'informer plus outre.

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*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le deuxième jour d'Octobre. Philippe Le Geyt convenu en Justice par le Procureur Général de la Reine, pour ouïr dépôt d'informateurs sur l'accusation qui lui est faite en conséquence du rapport du centenier Sorel de la paroisse de St. Hélier, le tout selon que plus au long est contenu au dit rapport et en l'acte de la Cour daté 1845, le 4 jour de Septembre. George Matthew Jones, écuyer, à la cause à récoler son témoignage. Mse. Catherine Manion, Mse. Eliza Kelly, Mse. Eliza Parsons, M. Philippe Pingelly, M. John Moony, Mse. Bridget Fitzpatrick, femme de M. Patrick Manion, à la cause à informer et ouïr record d'officier. Les dits témoins ont déposé par serment ; et leurs dépositions ont été rédigées et logées au greffe. L'accusé a été renvoyé en prison ; et il a été permis au dit Sieur Procureur Général de la Reine d'informer plus outre.

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*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le vingt-un jour de Novembre. Philippe Le Geyt sous accusation d'avoir, Vendredi, 22 Août, 1845, ou vers ce tems là, commis un assaut violent sur la personne de Caroline Elizabeth Raymond, jeune fille âgée de dix ans ou environ, avec l'intention de commettre le crime de viol sur la personne de la dite Caroline Elizabeth Raymond, le tout selon que plus au long est contenu au rapport du centenier Sorel de la paroisse de St. Hélier, et en l'acte de la Cour daté l'an 1845, le 4 jour de Septembre, convenu en Justice à l'instance du Procureur Général de la Reine, pour ouïr le rapport des hommes de l'enditement de la paroisse de St. Hélier sur la dite accusation. Pierre Le Sueur, écuyer, connétable, Messieurs Richard Du Parcq, George Le Cronier, Henry Mahy, Jean Binet, jun., Philippe Fauvel, jun., Philippe Le Sueur, Philippe Nicolle, George Marett, Thomas Monamy, Thomas Bichard, Edouard Romeril, Edouard Gallichan, actionnés par le Procureur Général de la Reine, pour passer comme hommes d'enditement à la charge ou décharge du dit Philippe Le Geyt sur la dite accusation. L'accusation a été lue au dit prisonnier ; et il a sur ce plaidé et fait sa déclaration, qui a été rédigée et logée au greffe ; lecture a été donnée des dépositions des témoins ci-devant rédigées et logées au greffe, et des autres pièces de la procédure. L'accusé a été entendu en sa défense par le moyen de son avocat ; et le dit Sieur Procureur Général de la Reine a été ouï. Les hommes de l'enditement se sont retirés avec toutes les pièces de la procédure, pour conférer dans le particulier ; et, étant de retour, ils ont fait leur rapport à la justice, savoir : la majorité d'entr'eux que l'accusé est plutôt coupable qu'innocent du crime dont il est accusé. Et il a été renvoyé en prison jusqu'à ce que le dit Sieur Procureur Général de la Reine fasse convenir la Grande Enquête du Pays, dont il a demandé le bénéfice.

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*A la Cour Royale de l'île de Jersey.*

L'an mil huit-cent quarante-cinq, le vingt-sixième jour de Novembre. Philippe Le Geyt sous accusation d'avoir, Vendredi, 22 Août, 1845, ou vers ce tems là, commis un assaut violent sur la personne de Caroline Elizabeth Raymond, jeune fille âgée de dix ans ou environ, avec l'intention de commettre le crime de viol sur la personne de la dite Caroline Elizabeth Raymond, le tout selon que plus au long est contenu au rapport du centenier Sorel de la paroisse de St. Hélier, et en l'acte de la Cour daté l'an 1845, le 4 jour de Septembre ; et lequel Philippe Le Geyt a été trouvé par l'enditement de la paroisse de St. Hélier plûtot coupable qu'innocent du crime dont il est accusé, comme paroît par acte de la Cour daté l'an 1845, le 21 jour de Novembre, convenu à l'instance du Procureur Général de la Reine, pour ouïr le rapport des hommes de la Grande Enquête du Pays, dont il a demandé le bénéfice, et voir ensuite ordonner par justice sur la dite accusation.

*De la paroisse de St. Hélier.*

Philippe Bouton, écuyer.
Jean Louis Janvrin, écuyer.
Edouard De La Taste, écuyer.
Charles Le Quesne, écuyer.
Daniel Messervy, gent.
Charles La Cloche Ricard, gent.
Jean Pierre Simonet, écuyer.
George Ingouville Poignand, gent.

*De la paroisse de St. Sauveur.*

Jean Poingdestre, écuyer.
Charles William Robin, gent.
Edmond Le Cornu, jun., écuyer.
Charles Edouard Hanham, gent.
Thomas Payn, écuyer.
Philippe Vivian, gent.
Thomas Anthoine, jun., gent.
Jean Mourant, écuyer.

JERSEY.

*Answers to Questions.*

SERIES I.

Francis Godfray, Esq., Greffier. 20 July, 1846.

*De la paroisse de St. Laurens.*

Tom Dupré, écuyer.
François Marett, gent.
Moses Gibaut, écuyer.
Philippe Charles Patriarche, gent.
Jean Helier De Ste. Croix, écuyer.
Jean Morel, gent.
M. George Bigrel.
Jean Le Gros, écuyer.

actionnés par le dit Sieur Procureur Général de la Reine, pour passer comme hommes de la Grande Enquête du pays à la charge ou décharge du dit Philippe Le Geyt sur la dite acccusation. Les hommes de la Grande Enquête ont été assermentés, comme en tel cas est requis et accoutumé. L'accusation a été lue au dit prisonnier; et il a sur ce plaidé et fait sa déclaration, qui a été rédigée et logée au greffe. Lecture a été donnée des dépositions des témoins ci-devant rédigées et logées au greffe, et des autres pièces de la procédure. L'accusé a été entendu en sa défense par le moyen de son avocat; et le dit Sieur Procureur Général de la Reine a été ouï. Les hommes de la Grande Enquête se sont retirés avec toutes les pièces de la procédure, pour conférer dans le particulier; et, étant de retour, ils ont fait leur rapport à la justice, savoir un nombre plus que suffisant d'eux qu'ils croient en leurs consciences que le dit Philippe Le Geyt est plutôt coupable qu'innocent du crime dont il était endité. Partant il en demeure dûment atteint et convaincu. Ensuite, après qu'il a été entendu en mitigation par le moyen de son avocat, la Cour, conformément aux conclusions du dit Sieur Procureur Général de la Reine, l'a condamné à un emprisonnement et travail forcé de six mois.

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*Serment des Témoins.*

Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous declarerez la pure et entière vérité de ce que vous connoissez sur la contestation en cause entre , sans aucune faveur, haine, ou partialité quelconque, comme vous voudrez en répondre devant Dieu, à la décharge de votre conscience.

Vraies Copies.

FR. GODFRAY, *Greffier.*

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*Serment du Bailly.*

Vous jurez et promettez ici, en la présence de Dieu, que fidellement vous exercerez l'état et charge de Bailly, en cette île de Jersey, sous notre Souveraine Dame Victoria, par la grâce de Dieu Reine du Royaume Uni de la Grande Bretagne et Irlande et des dominions qui en dépendent, renonçant à toutes supériorités foraines ou étrangères; vous soutiendrez et maintiendrez l'honneur et gloire de Dieu et la prédication de sa pure parole; vous conserverez et garderez les droits de Sa Majèsté, et les rappellerez par droit et justice, si vous trouvez qu'aucune chose en ait été omise, recelée ou étrangée; vous garderez et ferez garder la paix, le plus qu'il vous sera possible; vous détruirez et ferez punir et corriger les traîtres, larrons, ardeurs, homicides et blasphémateurs du nom de Dieu et tous autres malfaiteurs, chacun selon le démérite de leurs forfaits; vous garderez et ferez garder loyalement et justement les droits et coutumes de l'île; et, selon icelles, ferez droit au peuple, baillant et délivrant à un chacun bonne et briève justice, au petit comme au grand, au riche comme au pauvre, sans exception de personne, gardant le droit des veuves, orphelins, étrangers, et autres personnes indéfendues, autant qu'il vous sera possible; vous maintiendrez, soutiendrez et défendrez les droits, privilèges, franchises et libertés de cette île, vous opposant à quiconque les voudroit enfreindre ou corrompre: finalement vous vous conformerez selon le bon avis et conseil de Messieurs de justice de tems en tems, selon que la cause le requierra.

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*Serment des Justiciers.*

Vous . . . . . , puis qu'il a plu à Dieu vous appeler légitimement en cette charge, jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous exercerez l'état et charge de Juré Justicier en la Cour Royale de notre Souveraine Dame Victoria, par la grâce de Dieu Reine du Royaume Uni de la Grande Bretagne et Irlande, etc., en cette son île de Jersey, la Majesté de laquelle vous reconnoissez sous Dieu Suprême Gouverneur en tous ses royaumes, provinces et dominions, renonçant à toutes supériorités foraines et étrangères; vous garderez le droit de Sa Majesté et de ses sujets, et soutiendrez l'honneur et gloire de Dieu et de sa pure et sacrée parole; vous administrerez bonne et briève justice également, tant aux riches qu'aux pauvres, sans exception de personne, suivant les Loix, coutumes et usages confirmés par nos privileges, en les soutenant avec nos libertés et franchises, vous opposant à quiconque les voudroit enfreindre. Item vous ferez punir et châtier tous traîtres, meurtriers, larrons, blasphémateurs du sacré nom de Dieu, ivrognes et autres personnes scandaleuses, chacun selon son démérite, vous opposant à tous séditieux, à ce que la force demeure à la Reine et à sa justice. Vous assisterez à la Cour toutes fois et quantes que vous en serez requis, si vous n'avez une excuse légitime; et en tel cas vous mettrez un autre justicier en votre place, donnant votre avis, opinion et conseil selon la pureté de votre conscience. Vous honorerez et ferez respecter la Cour, et garderez et ferez garder le droit des veuves, orphelins, étrangers et autres personnes indéfendues; finalement, en vos conclusions, vous vous rangerez et conformerez au meilleur et plus sain avis de Monsieur le Bailly et de Messieurs de la Justice. Vous le promettez sur votre conscience.

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*Serment des Hommes dans les Enquêtes Criminelles.*

Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous rapporterez à la Cour ce que vous pourrez croire en votre conscience sur le crime dont . . . . est accusé, savoir: s'il est plutôt coupable qu'innocent, à sa charge ou décharge; ce que vous ferez sans faveur ni partialité, comme vous voudrez en répondre devant Dieu.

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2.—*Serment des Connétables.*

Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous exercerez la charge et office de Connétable en la paroisse de . . . . . Vous garderez et ferez garder a paix de Sa Majesté, vous opposant et saisissant de fait tous mutins, séditieux, larrons, homicides, et toutes autres personnes qui interrompent le cours de la paix publique, lesquels vous présenterez en

justice pour être punis selon leurs méfaits; ensemble tous hanteurs de tavernes, ivrognes, paillards, putains, blasphémateurs et tous autres qui contreviennent aux ordonnances et commandemens du magistrat, lesquelles ordonnances vous garderez et observerez, ferez garder et observer, autant qu'il vous sera possible: vous ne souffrirez en votre paroisse qu'aucune personne tienne de taverne, autre que ceux établis et licenciés de tems en tems; et aurez soin spécial, par vous et par vos officiers, que le jour du Dimanche ne soit profané, par hantise ou fréquentation aux dites tavernes, ou autres lieux, contraire aux ordonnances sur ce faites, lesquelles vous mettrez en due exécution; vous chercherez et ferez cherche, toutes fois et quantes qu'il sera nécessaire ou que vous en serez requis; notamment vous ferez cherche générale, une fois en trois mois, en tous lieux et maisons de la dite paroisse qui vous seront suspectes; vous conserverez et procurerez, autant qu'il vous sera possible, les droits qui appartiennent à la dite paroisse, vous réglant, en ce qui concerne le bien publique d'icelle, par l'avis et bon conseil des Principaux et autres les Officiers de la dite paroisse; lesquels Officiers vous assemblerez ou ferez assembler par le moyen de vos centeniers une fois le mois, pour aviser aux choses dont il serait besoin concernant la dite paroisse, et enfin qu'ils aient à déclarer tous malfaiteurs, réfractaires ou désobéissans aux ordonnances de justice, pour que vous en informiez la Cour et les officiers du Roi de tems en tems: vous exécuterez les mandemens de Monsieur le Gouverneur, ou de Monsieur le Lieutenant Gouverneur, de Monsieur le Bailly, ou de Monsieur son Lieutenant et de Messieurs de justice, en ce qui sera de leur charge respectivement, assistant aux états du pays lorsque vous en serez requis. Et de tout ce promettez faire votre loyal dévoir, sur votre conscience.

*Serment des Centeniers.*

Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous exercerez la charge et office de Centenier en la paroisse de . . . . Vous garderez et ferez garder la paix de Sa Majesté, vous opposant et saisissant de fait tous mutins, séditieux, larrons, homicides, et toutes autres personnes qui interrompent le cours de la paix publique, dont vous informerez le connétable, afin qu'ils soient présentés en justice, pour être punis selon leurs méfaits; ensemble tous hanteurs de tavernes, ivrognes, paillards, putains, blasphémateurs et tous autres qui contreviennent aux ordonnances et commandemens du magistrat, lesquelles ordonnances vous garderez et observerez, ferez garder et observer, autant qu'il vous sera possible. Vous veillerez à ce qu'aucune taverne ne soit tenue en votre paroisse, que par des personnes à ce établies et licenciées de tems en tems; et aurez soin spécial, par vous et par les officiers, que le jour du Dimanche ne soit profané, par hantise ou fréquentation aux dites tavernes, ou autres lieux, contraires aux ordonnances sur ce faites, lesquelles vous mettrez en due exécution: vous assisterez le connétable à chercher, et ferez cherche toutes fois et quantes qu'il sera nécessaire et qu'il vous en requierra, et notamment une fois en trois mois, en tous lieux et maisons de votre paroisse qui seront suspectes. Vous conserverez et procurerez, autant qu'il vous sera possible, les droits qui appartiennnent à la dite paroisse, vous réglant, en ce qui concerne le bien publique d'icelle, par l'avis et bon conseil des principaux, du connétable, et autres les officiers de la dite paroisse: vous assisterez le connétable à assembler les dits officiers une fois le mois, et les assemblerez vous-même lorsqu'il vous en requierra pour aviser aux choses dont il sera besoin concernant la dite paroisse, et afin qu'ils aient à déclarer tous malfaiteurs, réfractaires et désobéissans aux ordonnances de justice, de sorte que la Cour et officiers du Roi en soient informés de tems en tems: vous exécuterez les mandemens de Monsieur le Gouverneur, ou de Monsieur le Lieutenant Gouverneur, de Monsieur le Bailly, ou de Monsieur son Lieutenant et de Messieurs de la justice, en ce qui sera de leur charge respectivement, assistant aux états du pays lorsque vous en serez requis: et de tout ce promettez faire votre loyal devoir sur votre conscience.

*Serment des Vingteniers.*

Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous exercerez la charge de Vingtenier de la vingtaine de . . . . . en la paroisse de . . . . . ; que vous ferez tous bons et loyaux ajournemens et records, et assisterez le connétable ou centeniers, lorsque vous en serez requis; et ferez tous autres devoirs qui dependent de la dite charge.

*Serment des Officiers du Connétable.*

Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous exercerez la charge d'officier du Connétable de la paroisse de . . . . . ; que vous assisterez le dit connétable ou centeniers, toutes fois et quantes que vous en serez requis; et ferez tous autres devoirs qui dépendent de la dite charge.

Vrais Copies.

FRANCIS GODFRAY, Greffier.

3. [Here followed a copy of a draft of a Bill, already printed at p. 26.]

4.—*Extract of a Statement of the Mode of Proceeding and of going to Trial in the Royal Court of Jersey in all Causes, Criminal, Civil and Mixed, prepared in consequence of an Order from the Right Honourable the Lords of the Committee of Council, dated the 21st July, 1789, by James Hemery and John Dumaresq, Esqrs., Deputies of the States of Jersey.*

WE now come to the proceedings in criminal causes; and we must separate from these the case of high treason, because there is no authority in the island competent to acquit, punish, or even to examine witnesses on the charge. The governor, upon suspicion that this high crime has been committed by any one, is directed by an ordinance of Henry VII., of the 17th of June, 1495, confirmed again by the ordinances of 1591, to seize and imprison the person suspected, calling to his assistance, for this purpose, two of the jurats; but they have no power to proceed further. The inconvenience resulting from this lame authority, in case the accused should be innocent, is so great that we think it our duty to represent it to your Lordships as a grievance. Experience has shown, within some years past, that a loyal subject could be accused of such a crime, and for want of knowing what tribunal to recur to for his trial, remained for many months in confinement.

The proceedings in other criminal suits are as follow:—It is, in the first place, the duty of every constable within his parish, assisted by his officers, to apprehend all culprits, particularly those who may be guilty of offences deserving a corporal punishment, and to present them before the Court. This is enjoined to the constables by the oath they take when admitted into office; and it is moreover

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*Answers to Questions.*

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Francis Godfray, Esq., Greffier. 20 July, 1846.

enacted by the 14th Article of the Ordinances of the Commissioners, in 1562, "that if any transgressor of the ordinances be found deserving corporal punishment, he shall be presented without delay before the Court by the constable and the sworn officers of his parish, that he may be punished according to the exigency of the case."

When an offender is thus taken up the officer of the police puts him in custody, and at the same time informs the chief magistrate of it. On the next Court day he presents him, and gives in a report in writing, containing the accusation and the informations he has received on the subject. The accused is then arraigned, or called upon to say what he chooses in his justification. In doing this the Court usually point out to him the privilege he has of choosing any one of the advocates for his counsel. He then, with the advice of his advocate, makes what is called his declaration (generally not guilty), which is taken down in writing by the greffier.

The next consideration, whether the accused shall be committed or bailed, is at the discretion of the Court. Some great offences have been allowed bail; others, of a much inferior degree, nay, of a most trivial nature, have been refused it. Many instances of this might be quoted; but it would only serve to swell still more this statement, which is already too voluminous.

The 12th Article of the Constitutions of King John enacts: "Item, quod nullus debet imprisonari in castro, nisi in casu criminali, vitam vel membrum tangente, et hoc per judicium duodecim coronatorum juratorum, sed in aliis liberis prisonis ad hoc deputatis."

The same subject is considered, on similar principles, in the 6th chapter of the Grand Coûtumier, which treats of justicement. There we find that "King Philip established a law in Normandy, ordering all bailiffs to swear that they would faithfully observe that no one should be put in prison or confinement except for cause appertaining to the plea of the sword, or for cause involving the peril of life or limbs. And that if any one were taken up for any other cause he should be set free (without taking from him money or gain) upon his giving sufficient bail that he would appear at the term appointed." And further, the same book, treating of Haro, says, "that for crimes, concerning which there is danger of life or limb, the offenders are to be put in prison and held fast; that those actions are called criminal by which a man may lose life or limb; that others are called simple actions, because the defaulter is simply chastised for them, as a child with a rod."

Upon the accused's being ordered to prison or admitted to bail, the King's procureur asks *permission d'informer*, viz., leave to file an information against the offender, which is granted of course in every criminal suit, and this puts an end to the business for that day.

On some subsequent Court day the prisoner is again brought up, to be present at the examination of witnesses summoned by the King's procureur. This is done before two jurats only. The accusation is then read afresh to the prisoner, as well as his former declaration, and he is asked if he have anything to vary from what he first declared, which he may do in any stage of the proceeding. The prisoner is also allowed to suggest such questions to the witnesses as he thinks proper, and to point out witnesses for his justification or character.

After the witnesses have declared what they know of the matter, their deposition is taken down in writing by the greffier, or by any of the advocates or attorneys who may be present at Court; and it has happened sometimes (however unintentionally) that the depositions taken down have varied materially from the *vivâ voce* evidence. The depositions are then collected by the greffier, and kept in his possession. The accused is remanded to prison; and the King's procureur obtains leave *d'informer plus outre*, viz., to call more witnesses.

This calling up of the prisoner before the Court, taking of depositions, and remanding him to prison, may be repeated as often as the King's procureur thinks proper; and it is done frequently, and during a considerable space of time. J. B. Le Blanc Du Hamel was accused of having stolen a watch, and was presented before the Court on the 1st of July, 1766, and committed. This man was brought to Court and sent back to prison seven times before he was tried, which was not till the 27th of October following.

Matthew Alexandre, in an accusation of libel brought on against him by William Charles Lempriere, Esq., lieutenant bailly, was called before the Court on the same charge no less than 13 times at the suit of the two King's officers, who thought proper, in this case, to join in the prosecution, and that during the space of more than two years, viz., from the 15th of October, 1785, to the 17th of November, 1787; on which last day the Court refused the trial by jury to Alexandre, but did not proceed to trial themselves, and no more has been heard of the prosecution since that day.

When the King's procureur declares he has no more witnesses to call, the information is closed; and then, and not before, comes the question whether the prisoner shall be judged by the Court, or whether the constable and the 12 sworn officers of the parish to which he belongs shall be called to indict him.

We need not, as we conceive, point out the impropriety of this course of proceeding. The constable and his 12 officers are styled, in the language of the country, *l'enditement;* and when the majority of them find a prisoner rather guilty (this is the term of their report) than innocent, he is said to be criminally indicted, and a jury (if demanded by the prisoner) is then called to try the fact. The first inquiry carries in all its parts such striking features of the functions of a grand jury in England, as leave no room to doubt but that they were originally constituted for the same purpose, and (proportion kept) both equally well adapted for this preliminary step in a criminal suit.

It appears, indeed, from a great number of cases in the old books of the Court, that the constable and his officers exercised this function prior to the informations.

By the article of the ordinances of the Commissioners in 1562, which has been quoted before, it would seem that the duty prescribed there to the constable and his sworn officers to present before the Court such offenders as were found deserving a corporal punishment, implies some prior examination on the part of the constable and his officers. And in the 32nd article of the ordinances of the subsequent Commissioners, in 1591, this point is further explained in this way: "When any person shall be lawfully accused, and shall not confess nor be taken in the fact, such person shall be formally indicted (as it is customary in indictments); and if upon this he be found guilty, he may submit to a legal inquest." In the following article of the said ordinances it is provided that witnesses are to be called to give evidence of the facts before the criminal inquest. From all this it appears that the indictment was to be the next step to the accusation, and to take place before the calling of witnesses.

Mr. Le Geyt, who was chief magistrate of this island about a century ago, has left the following observations on the subject:—

"Indictment, in the old style of the bar, signified a denunciation. To indict was to denounce a man in Court as a criminal. It is in this sense that an Act in our Rolls of 1574, the 6th of October,

mentions that the King's procurator could not, *ex officio*, put a man in gaol without a party adjoined or a sufficient indictment. And in 1603, the 8th of October, on the current rumour than Jean René had stolen the purse of one named Du Tot, the constable of Heliers was ordered to summon the sworn officers (in order to proceed to the indictment if he were found guilty), together with the said Du Tot and other informers, who might be made use of in the cause. So early as that time a denunciation or indictment was not received without some plausible foundation. It appears by the records of itinerant judges, that formerly the islanders were indicted for all manner of cases of assize by six men, and no more. The indictment was secret and apart, and none of the men who served in it could make part of the inquest. It is not a hundred years since the indictments were still made by six men. In 1563, the 17th of March, it is mentioned that six men, sworn, made their report that two persons accused were rather thieves than loyal men, &c.; and in 1611, the 20th of July, that the constable and six men, sworn, of the parish of St. Ouen, differing in opinion concerning the crime of Rachel le Blanc, the Court had stayed the proceeding, and deferred it to the next term of Catel, in order to have the advice of the absent justices, the officers being charged to get more ample information. In the same year, on the 5th of December, it is declared that, if the men on oath differ, 12 must be called to form the indictment. From hence, I believe, originated the custom of 12 sworn men assisting the constable or centenier of the parish of the criminal in the indictment, as they do at present, and never fewer.

"There are numberless sentences in criminal matters and inquests in which there is no trace at all of indictment. Indictments are for doubtful cases only. They are now something more than they were formerly. The indictment was, in a manner of speaking, only an official accusation; and it is now a species of sentence and of judgment of credence on all the proofs which the public officers and the private prosecutor, if there be any, may have produced. The indictment follows the information; and the indictment was formerly as the first step in a criminal suit, at least, for want of an accuser. I believe, nevertheless, that it is, even now, allowed to have witnesses and proofs after the indictment, and even on the day on which the inquest is called; for it were to be wished that the men who compose both the one and the other should themselves hear the witnesses *vivâ voce*."

We see in some old Acts, as Mr. Le Geyt observes, that six men were deemed sufficient for an indictment. We also find in others that anciently a jury might consist of 12 men only in criminal cases; whereas at present the usage is to have 24.

It has been held that, if the Court find from the information they have received that the accusation is sufficiently proved, they have a right to proceed to trial without indictment or jury. And there are many precedents in the rolls which prove that they have exercised this power. We shall take notice of one only, which is that of Elizabeth Le Gros, who, on the 6th of November, 1750, was tried by the Court for the murder of a bastard child, and without indictment, or jury, or confession of her crime, was found guilty by the Court, sentenced to death, and executed; and, what appears extraordinary in this case is, that Phil. Falle, her accomplice, as he is frequently called in the judgment of the Court, was allowed the benefit of a jury, and acquitted on the 4th June, 1751.

It must at the same time be observed that the said late majority of the Royal Court do not claim that power at present, however they may have exercised it formerly; for in their observations to your Lordships, which have been mentioned before, they say that the calling an *enditement* is only dispensed with "when the prisoner confesses the fact;" for though the Court did formerly proceed without *enditement* or *enquête* when the charge appeared to be sufficiently proved, and this agreeably to the *coutûme* of Normandy, yet this hath not been done for a long time past, and it is now established as an invariable rule to call an *enditement* when the prisoner has pleaded not guilty.

The *enditement* then being summoned and present, to the number of 13, including the constable, the prisoner is asked if he have any exception to either of them, and a challenge for cause (the validity of which is decided by the Court) is allowed, but not otherwise. To provide against this, one or two more than the number requisite are usually present. Seven jurats at least must attend upon an indictment. The proceedings are now read through by the King's *Procureur* beginning by the accusation or charge against the prisoner; then his arraignment and plea; and lastly the depositions.

After this is done, the prisoner is heard in his defence by means of an advocate, and the King's *Procureur* next in his observations. Then the men of the indictment retire in private with the *vicomte*, taking with them the depositions and other parts of the procedure to consider the whole matter over again, if they think proper. No oath is administered to them upon this (however solemn) inquiry; yet they are supposed to speak upon oath when they bring in their report, for they are asked by the chief magistrate whether, upon the oath which they took when admitted into office (which may be 10 years back or more), they believe in their conscience the prisoner to be rather guilty than innocent, or rather innocent than guilty, of the crime laid to his charge.

The magistrates, in order to receive the report of the *enditement*, assemble in a corner of the Court-house, and there call the men up one by one. In this place each gives his opinion or answer to the question just mentioned as he passes, and the whole is conducted with an appearance of mystery. If the majority of the 13 are of opinion that the prisoner is rather innocent than guilty, he is enlarged. If, on the contrary, the majority find the prisoner rather guilty than innocent, he is criminally indicted; and then the prisoner has his option of either submitting to the Court for judgment, or appealing to a jury upon the fact.

In the first case, the Court proceed immediately to sentence. In the other, the prisoner is sent back to gaol, generally in irons, until a jury can be summoned, which is usually done in the course of a week.

This jury is composed of 24 persons, taken from three different parishes, eight of them from the prisoner's parish, and the rest from the two neighbouring parishes in equal proportions. These men of the jury are named by the King's *Procureur*, secretly, without the knowledge either of the prisoner or of any other person; and the summons they receive is usually served late in the evening preceding the day of their attendance.

We beg leave here to make two observations on the mode of empannelling a jury. In the first place, it seems to us improper that a jury should be named by the King's *Procureur*, who is officially bound to prosecute the offenders, more particularly as a peremptory challenge of jurors is not allowed the prisoner. In the 33rd article of the Ordinances of the Commissioners, in 1591, it is said that juries shall be indifferently chosen by the officers of His Majesty; but it is not explained who are meant by "the officers of His Majesty," whether the *Procureur*, the advocate, or the *vicomte*, or all of them together, for they are all officers of His Majesty, and equally so, by patent.

In the second place, we foresee inconveniences which may arise from the circumstance of taking the jury from the prisoner's parish and the two neighbouring parishes, because it may happen that several persons of different parishes shall be accomplices in one and the same crime, and then they

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must be tried by separate juries. Whereas if juries were chosen from the district where the fact is supposed to be committed, this inconvenience would be removed.

When the Court are met for the trial by jury in a criminal cause, all the jurats are obliged to attend; seven at least must be present. The prisoner is then brought to the bar, and the men of the jury are called over one by one. The prisoner may challenge any of them for cause only, as in the case of an indictment. When 24 are passed without challenge, the jury are sworn in a body together, and they take their places. Here the same order is observed as at the indictment, and the papers read, together with the record of the indictment. No *vivâ voce* evidence is produced to the jury, or any other matter brought than what appeared before. The prisoner makes his defence again, and the King's *Procureur* is also heard; after which the jury retire.

At the return of the jury into Court, the same mysterious proceedings take place again as upon the indictment, and the same question is put to each of them. The chief magistrate, after that, resumes his chair, and delivers the verdict of the jury, without mentioning the number that have cast the prisoner, or the number that have acquitted him; but the result of the whole, which is admitted to be that if 5 out of the 24 do not find the fact, the prisoner is acquitted. If, on the other hand, 20 or more find him guilty, he is duly convicted of the crime, and the Court proceed to judgment.

We shall venture to make a few remarks on these modes of trial, first by indictment, and then by inquest, and submit, with great deference, to your Lordships whether this might not be better regulated to answer the purposes of justice and general conveniency. In the first place, we conceive it unnecessary that there should be two trials for the same accusation. An appeal from one tribunal, who is supposed to have examined, as fully and as scrupulously as possible, all the circumstances for and against the prisoner, to another tribunal who can do no more, is likely to create mutual prejudices and unfriendly dispositions. One solemn and regular trial would tend better (as we humbly presume) to the conviction of the guilty, as well as to the protection of the innocent. But, then, the previous inquiry by the constable and his officers, in the shape of a grand jury, and according to the ancient system, should be renewed, and they should all of them be sworn before the Court, and informed of their duty in that respect by the magistrate; after which they should retire, as they do at present, with the *vicomte*, and examine the accusation and witnesses upon it if necessary. It would also be better to take the constable and officers from the parish where the crime is supposed to have been committed, than from the prisoner's parish, for the reasons before mentioned.

As to the number which at present compose the jury in criminal cases, and the form and effect of their report, we humbly conceive it also liable to great objections. It seems to us that 12 men, agreeing in opinion, are quite sufficient to establish a verdict. A concurrence of opinion imposes on a jury the necessity of investigating the truth at a time when they are left to themselves, and perhaps best able to discover it. Neither does the number of 24 seem proportionate to the extent of this island; yet, if that number were summoned, and the prisoner allowed to challenge peremptorily one half of them, no inconvenience, as is conceived, would arise from it. On the one hand, the punishment of an offender could leave no remorse with the Court or jury on account of some of the jurors supposing him innocent; on the other hand, no person would be punished but by the concurring voice of at least 19 of his fellow subjects, viz., 7 of the *enditement* and the 12 jurors. And if a prejudice should remain in favour of the present form, because offenders are not convicted but by the opinion of 20 of their equals, the *enditement* might consist of 15 instead of 13, then the full number of 20 must meet in opinion for the conviction of the guilty.

We hope your Lordships will pardon our having presumed thus far. These suggestions are offered with the utmost deference, and proceed from our most anxious desire to obtain some regular and fixed rule in criminal causes in this island.

## ANSWERS TO THE SECOND SERIES OF QUESTIONS.

### No. 1.

SERIES II.

Bailiff and Jurats of Royal Court. 10 Aug., 1846.

*The Answer of the Bailiff and Jurats of the Royal Court of Jersey to the Second Series of Questions.*

1. A person is not considered responsible before he is seven years of age, nor until he has attained years of discretion. Although we know of no distinction in this respect between different offences, it is probable that, if a capital crime were committed by an infant between the ages of seven and fourteen, the amount of responsibility would much depend upon the degree of intelligence which the party accused would be found to possess.

2. If it were a minor offence, the Court would order the lunatic to be placed under the care of a *Curateur*, whose duties are analogous to those of a Committee of a Lunatic in England. Should the party accused be acquitted of a capital crime on the ground of insanity, or if in the course of the proceedings it should be clear to the Court that the accused was decidedly mad, the Court would refer the proceedings to her Majesty in Council, and remand the accused until her Majesty's pleasure should be known thereupon. Incapacity to distinguish right from wrong.

3. In general, she is not responsible when she commits an offence in the presence or by the coercion of her husband; but we are of opinion that for treason, murder, and other heinous crimes, and for certain misdemeanours, she would be considered responsible.

4. With the exception stated in the answer to the preceding question, we are not aware of any.

5. 1st. If not the actual perpetrator, but present at the time of the offence, and assisting the actual perpetrator by counsel, watching, or otherwise, he would be found guilty of aiding, assisting or participating, as the case may be.

2nd. If not present, but that he instigated or assisted by counsel or otherwise the actual perpetrator before the time of perpetration, then he would be found guilty accordingly.

3rd. If not present, but that he, after the perpetration, assisted by counsel or otherwise the actual perpetrator, he would be found guilty as an accessory after the fact.

6. The act of accusation generally charges the accused with the offence, or with having

Bailiff and Jurats of Royal Court. 10 Aug., 1846.

aided, assisted or participated in the commission of the crime. He may also be charged with a specific crime, as a participator in the perpetration of the principal offence.

7. He may be charged alone. It is not necessary that the actual perpetrator should have been convicted previously.

8. There is no distinction.

9. In Jersey the distinction between principals of the first and second degree does not exist. All persons present, or who in any manner are aiding, assisting or participating in the commission of an offence, may be convicted.

10. Yes. The person who is proved not to have participated in the crime is acquitted.

11. Both these questions may be answered affirmatively.

12. In cases of *délits* or misdemeanours, the party charged must be prosecuted within a year and a day. But, for murder and other heinous crimes, a prosecution by the old Norman law must have been instituted within twenty years from the commission of the crime. But we have no decision on the subject.

13. In the Island of Jersey or on the high seas.

14. None.

15. "*Crimes et délits.*" "*Crimes*" are punished capitally or by fine and imprisonment, with hard labour and pillory, with banishment or transportation. "*Délits*" by fine or imprisonment, with hard labour, or both, and sometimes whipping.

J. DE VUELLE, *Bailiff.*
E. S. BISSON, *Jurat and Lt. Bailiff.*
PHILIP DE ST. CROIX.
PH. W. NICOLLE.
C. BERTRAM.
JOHN LE COUTEUR.
PH. PICOT.
JOHN PELGUÉ.
PHIL. LE GALLAIS.
FRS. ARTHUR.
} *Jurats.*

*Jersey, August* 10*th*, 1846.

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No. 2.

*The Answers of Philip Le Maistre, Esq., Jurat of the Royal Court of the Island of Jersey, to the Second Series of Questions.* P. Le Maistre, Esq.

1. There is no age, specified by law, at which a person is not responsible to the criminal law. Lads from eight to twelve years of age, and upwards, are almost weekly punished by sentence of the Court, the punishment being solitary confinement, or private whipping. A distinction is made with respect to offenders of tender age committing a capital offence.

2. If for a misdemeanour, the prosecution would instantly be abandoned; but if for a capital crime, it cannot be abandoned until a verdict setting forth that the party charged had committed the act while labouring under insanity. If it were alleged that the accused party is of unsound mind, the Court would appoint two or more medical referees to examine the party, charging them to give evidence upon oath as to his state of mind.

3. In cases of misdemeanour, the Court has held that a married woman, living under the same roof with her husband, is not responsible to the criminal law, except in capital crimes.

4. I am not aware of any distinction being made in that respect.

5. (1.) He is found guilty as an accomplice.
(2.) Likewise found guilty as an accomplice.
(3.) Firstly, Found guilty of having aided and assisted the actual perpetrator.
Secondly, Subject to punishment at the discretion of the Court.

6. He cannot be charged with the principal offence, but merely of a specific crime, as a participator in the perpetration of the principal offence.

7. The party participating is always charged together with the actual perpetrator; but he could be charged alone if the principal offender had absconded and was not within the reach of justice; it is not, therefore, necessary that the actual perpetrator should have been convicted previously, whatever may be the nature of the offence.

8. The answer to this question is, I think, contained in the previous one.

9. The Court, to my knowledge, has never construed a party to be present when he was actually absent, such distinctions being unknown in this bailiwick.

10. Any number may be charged in a single prosecution. When a party is charged in a joint offence, and it is proved that he did not participate in it, the Jury is bound to return a verdict of Not guilty, and he is liberated instanter.

11. Different offences may be charged in a single prosecution against the same party. An offence committed by the party alone cannot be charged in the same prosecution with one committed by him jointly with another person.

12. There is no limitation as to the time within which a prosecution must be instituted in criminal cases.

13. It must have been committed within the bailiwick.

14. None whatever.

15. In the absence of statute or written law respecting the mode of procedure in criminal cases, the classification of offences is left to the Public Prosecutor (the Attorney General), who prefers an indictment against the prisoner according to the nature of the offence; and each offender is dealt with and punished in conformity to usage, custom or precedent.

PH. LE MAISTRE, *Jurat of the Royal Court.*

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*Answers to Questions.*

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J. Hammond, Esq. 31 July, 1846.

No. 3.

*The Answers of John Hammond, Esq., Advocate of the Royal Court of Jersey, to the Second Series of Questions.*

1. We have no law defining or declaring at what period of nonage a party will not be legally responsible for a criminal offence. Judging by the practice observed in our Court, I would consider that in this respect we would follow the rule, depending, not so much upon the age, as upon the offender's understanding and mental capacity, having regard, nevertheless, to the youth of the party charged, especially as related to the amount of punishment. I remember no instance where a party under the age of puberty has suffered for a felony; it would be otherwise in some instances for a mere misdemeanor. The quotation in the margin expresses closely the practice that would, I think, be followed in Jersey.*

2. The fact of the prisoner's insanity at the time he committed the act, for which he stood charged, would have the effect of staying proceedings, if ascertained before he was regularly arraigned: and ulterior measures would be adopted by the Court consequent upon that fact†. If brought to light by the evidence upon the trial, it would give rise to an acquittal; and precautionary measures for the future would be taken to protect society. As regards the test of unsoundness of mind that would be received by the Court, I conceive that the general principles of law would be the guide. The usual definition or distinction of *knowledge between right and wrong* would be probably the basis of such an investigation: but I think another definition of aberration, namely, whether the individual charged had at the time of committing the imputed act any power of control over his actions, and also the difficult but important question of the derangement of the moral faculties of the individual, would likewise be taken into consideration. Such a question would, of course, be mainly regulated by the facts of the case, which are too numerous and multiform to be minutely enumerated. The old "*coutume*" on this subject is laid down by Terrien, as quoted in the margin‡.

3. and 4. In cases of theft, I conceive that, were a married woman, coerced by her husband, present or aiding in consequence of such coercion, she would not be responsible to the law for the deed; neither would she be amenable for harbouring or sheltering her suspected or guilty husband. I do not think this irresponsibility, resulting from the peculiar relation of life between the husband and wife, would be extended to any other party where threats or coercion had been exercised, unless the threat or menace really involved imminent and immediate danger of life or limb. These remarks do not relate to any local law on this subject, as we have none.

5. With respect to the supposed cases here laid down, we would, in their investigation, be guided by the general principles regarding principals and accessories.

In the (1) instance, I consider the party present, under the circumstances described, would be deemed a principal.

In the (2) as an accessory before the fact.

In the (3) as an accessory after the fact.

We have a local law to this effect. "Ceux qui seront accessoires en crimes de meurtres, ou qui en félonie, après le crime commis, recevront ou favoriseront les coupables avant leur conviction, ou qui emporteront ou favoriseront l'évasion des coupables hors de l'île, après que proclamation aura été faite de les appréhender; et ceux qui briseront la prison, ou assisteront tels délinquants, seront punis par amende et emprisonnement."

6. If a party were assisting, by watching, during the commission of an offence, I conceive that he would, in that case, be considered as a principal, though not the actual perpetrator of the deed, nor actually present where it was committed.

7. In the mode of prosecuting for offences where there are principals and accessories, or where the prisoner or prisoners may be the one or the other, there is no fixed rule by our practice, as to the order in which they may be tried. The more usual mode is to charge the party or parties accused as principals, and by a second count as participators; and, if the evidence only reaches him or them in the second capacity, he or they are acquitted of the first part of the accusation, and convicted on the second clause. By our practice, an accessory may be charged and convicted either before or after a prosecution against a principal.

8. I know of no legal distinction consequent upon the difference of the offence; but I know of no party having been prosecuted here, as an accessory before the fact in murder, before the principal was proceeded against; at least, no such case has occurred in the course of my practice.

9. My answer to question 6 will illustrate what I consider constructive presence. But on all these points, as before stated, we have no legal code defining these distinctions.

10. More than one party can be charged in a single accusation. If after investigation it appears that one or more of the parties arraigned are not guilty of participation, they are discharged forthwith.

11. Several offences may be included in a single prosecution against the same party; and he may be accused of having committed an offence alone, in the same prosecution in which he is tried for an offence committed by him jointly with others.

12. On this question, the law is thus stated by Terrien.

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* On a douté si un impubère pouvoit être poursuivi *actione furti;* et l'on a décidé que l'impubère ne peut être coupable de ce délit s'il n'ést proche de sa puberté, et s'il ne connoit qu'en dérobant il fait mal, *quando malitia supplet ætatem.* Si la foblesse de l'age n'empêche pas qu'on ne punisse les délits des impubères, elle fait au moins modérer les pein es.—Roupeau de la Combe.

† 1821, May 26th, Rex *v* Du Bo is.

‡ *Des forcenés. La Coustume.*—S 'aucun est hors de sens, et il occit ou mehaigne un homme par sa forcenerie, il doit estre mis en prison et estre soustenu du sien: ou l'en lui doit pourvoir des communes omosnes, s'il n'a dequoy estre soustenu. S'aucun est en telle manière forcené que l'on doye douter de sa forcenerie, qu'il ne trouble le pays ou par feu ou par aucune chose qui soit contraire au commun salut, il doit estre lié et gardé par ceux qui ont ses choses, qu'il ne mefface à nully. Et s'il n'a rien, tout le voisiné doit mettre conseil et aide du sien à refrener sa forcenerie.

J. Hammond, Esq. 31 July, 1846.

"L'en doit sçavoir qu'aucun ne peut suyr de meffait qui dedans l'an et jour n'ait esté monstré à la justice, et dequoy la clameur n'ait esté faite si comme elle doit. Mais de meurdre peut on suyr quand certain signe et enseignes en sont monstrées par loyal tesmoignage du pays, par qui l'en sache certainement du meurdre qui a esté fait.

Plainte d'excez et mal-façons de corps se doit faire dedans l'an et jour du délict; mais suite d'homicide et d'autre crime publique ne se prescrit que par le laps de ¶ vingt ans."

The prescriptions here stated, would, I conceive, be adopted by the Court. Perhaps, if there had been a proceeding *par contumace*, ¶ this term might be extended to thirty years.

13. Within the bailiwick of the island.

The Court has also, sometimes, taken cognizance of offences committed on the high seas.

14. None.

15. Our practice, which may be considered based upon our common law, the "*ancienne coutume*" of Normandy, recognises a classification of offences, which affects both the punishment to be inflicted and the mode of trial.

All felonies are tried by juries. So are larcenies, embezzlement, and great violence upon the person, which may not come under the denomination of felony.

Slight misdemeanors, breaches of the peace, actions for contravening prohibitory regulations and enactments emanating either from the island legislature or from the Imperial Parliament (when such Acts of Parliament have force of law in the Island), and adjunct causes, are prosecuted before the Court without a jury.

These several offences are designated "*crimes*"—"*délits*"—"*infractions ou interruptions de la paix publique*"—"*contraventions aux lois*"—et "*causes en ajonction.*"

JOHN HAMMOND,
*Advocate of the Royal Court, Jersey.*

*July* 31*st* 1846.

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No. 4.

*The Answers of Francis John Le Couteur, an Advocate of the Royal Court of the Island of Jersey, to the Second Series of Questions.*

Francis John Le Couteur, Esq.

1. A person is not responsible to the criminal law before he is seven years of age. There is no distinction in this respect between different offences.

2. If it appears that the party charged was of unsound mind at the time of the offence, he is acquitted on the ground of insanity. A party is not responsible to the criminal law, when it is clear that he is not a free agent, that is, unable to distinguish right from wrong.

3. A married woman might be considered not to be responsible to the criminal law, if, when she committed an offence, there was compulsion on the part of her husband.

4. Yes, such as that mentioned in the preceding answer.

5. If not the actual perpetrator, but present at the time of the offence, and assisting the actual perpetrator by counsel, watching, or otherwise, he would be found guilty as an accomplice.

If not present, but that he instigated or assisted, by counsel or otherwise, the actual perpetrator, before the time of the perpetration, he would be found guilty as an accomplice.

If not present, but that he, after the perpetration, assisted, by counsel or otherwise, the actual perpetrator, he would be found guilty as an accessory after the fact.

6. In the several cases supposed in the last question, the party so instigating or assisting can be charged with the principal offence; though he may also be charged with a specific crime as a participator in the perpetration of the principal offence.

7. In the several cases above suggested, the party participating is generally charged with the actual perpetrator. He may, however, be charged alone; nor is it necessary that the actual perpetrator should have been convicted previously.

8. There is no distinction, in this respect, as to different offences.

9. All persons in any manner assisting in the commission of an offence are found guilty accordingly.

10. More than one person can be charged in a single prosecution. If that which is charged as a joint offence is proved to have been an offence in which one of the accused parties did not participate, he is of course acquitted.

11. Yes. Yes.

12. A prosecution, for minor offences, must be instituted within a year and a day; for murder and other heinous crimes, within twenty years.

13. In order to subject the offender to a prosecution by the criminal law of Jersey, the offence must have been committed in the island or on the seas.

14. There is no distinction, with respect to apprehension, trial or punishment, or any of the incidents thereto respectively, between offences committed in different places within the territory subject to the criminal law of Jersey.

15. Larceny is punished with imprisonment; robbery, according to the gravity of the offence, with imprisonment and hard labour, or transportation; murder, with death; which, however, has recently been commuted by the crown, in one instance, to transportation for life.

FRANCIS JOHN LE COUTEUR.

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No. 5.

*The Answers of Francis Godfray, Advocate of the Royal Court of Jersey, to the Second Series of Questions.*

Francis Godfray, Esq.

1. There is no positive law fixing the age before which a person is not considered responsible to the criminal law. It is left to the court or the jury, which tries the person charged, to decide

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Francis Godfray, Esq.

if he is of sufficient discretion to be responsible for his acts. I do not think that there is any case of a child under ten years of age tried for a crime,

2. If a party, charged with a misdemeanour, appears to be insane, the Court orders six of the principal inhabitants of the parish in which he resides to be summoned at the suit of the Attorney General; they are questioned upon oath, whether they believe him to be of sound mind, and able to take care of his person and property; and, if they report, as their opinion, that he is of unsound mind, or unable to take care of his person and property, the Court orders that a curateur or guardian shall be appointed to his person and property. If the party charged is accused of a crime, the jury that tries the offence decides if the person charged was of an unsound mind at the time of the offence, or at the time of the trial. There is no positive test of the unsoundness of mind, required to prevent a party from being responsible to the criminal law: that question is left to the decision of the jury.

3. A married woman is considered not to be responsible to the criminal law for a theft, a larceny, or the receiving of stolen goods, when she has acted under the coercion of her husband, or in his presence, which is considered as coercion.

4. If a person has committed an offence through coercion and bodily fear, he would not be held responsible: but the degree of coercion and fear necessary to excuse him is left to the Court or jury to decide.

5. An accessory before the fact is liable to the same punishment as the principal offender. An accessory after the fact, as well as a receiver of stolen goods, knowing them to be stolen, is liable to fine and imprisonment.

6. The party is generally charged with the principal offence, and also with having aided, assisted or participated in the offence.

7. He is generally charged together with the actual perpetrator; and they are both charged with the principal offence, and also with having aided, assisted or participated in the offence. But he may be charged alone; and it is not necessary that the actual perpetrator should have been convicted previously, especially if he is out of the island, or if it has not been possible to arrest him.

8. There is no difference in this respect as to different offences.

9. The law has not defined the limit of actual or constructive presence.

10. More than one person can be charged in a single prosecution. All parties to an offence, whether principal or accessories, are generally charged in the same prosecution; and they are generally all charged with the principal offence, and also with having aided, assisted or participated in the offence or crime. The accusation is so worded that, if one of the parties charged is found Not guilty, the other may be found Guilty.

11. Different offences may be charged in a single prosecution against the same party. An offence committed by the party alone may be charged in the same prosecution with one committed jointly with another person.

12. A prosecution for a misdemeanour must generally be instituted within a year from the commission of the offence. A crime may be prosecuted within twenty years of its commission.

13. The offence must be committed in the island of Jersey, or on the high seas.

14. There is no distinction with respect to apprehension, trial or punishment, or any of the incidents thereto respectively, between offences committed in different places within the territory subject to the criminal law of Jersey.

The *connétable, centeniers, vingteniers* and *officiers du connétable* cannot act except within their own parish.

15. The law of Jersey assigns different punishments to different crimes and offences. The other part of the question has been answered previously.

FRANCIS GODFRAY, *Advocate.*

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No. 6.

Francis Godfray, Esq. Greffier, and James Godfray, Esq.

*Answers of Francis Godfray, Greffier, and James Godfray, Advocate, of the Royal Court of the Island of Jersey, to the Second Series of Questions.*

1. By the law of Normandy in which our jurisdiction has originated, the age before which persons were not considered responsible to the criminal law was ten years and a half.

From this age to that of puberty (fourteen), if they were found to have sufficient capacity to distinguish good from evil, they were punishable, though not to the utmost rigour of the law.

After the age of fourteen they were fully responsible to the criminal law.

These rules appear to have been generally followed in Jersey.

In this respect no distinction is made between the different offences.

2. If at any stage of the proceedings it is proved that the accused party was of unsound mind at the time he committed the offence, the Queen's Attorney General may be allowed to drop the prosecution. Should the unsoundness of mind not be sufficiently proved to warrant the prosecution being dropped, the trial takes its course: and the question, as regards the unsoundness of mind, and the test of such unsoundness, is submitted to the Juries. In the cases where the prosecution is dropped, or where the offender is acquitted on the ground of unsoundness of mind, and that fear for public safety is apprehended of his future conduct, he is detained.

3. A woman is considered responsible to the criminal law unless she had been acting under the immediate control of her husband.

4. A party responsible to the criminal law is relieved from such responsibility by having acted under the control of another party, as in the case above mentioned. *Les insensés, les furieux, et ceux qui sont en enfance,* are also relieved from such responsibility.

5. When a party is charged with an offence, if it appears that he was not the actual perpetrator, but present at the time of the offence, and assisting the actual perpetrator by counsel, watching, or otherwise, he is considered to be punishable in the same manner as the actual per-

petrator, as are also other accessories before the fact; but the Court generally uses its discretionary power in treating them with less severity according to the degree of guilt.

As regards accessories after the fact, we have in the records of the Royal Court of Jersey an order in Council, dated 1635, June the 12th, from which is the following extract.

"First, whereas there is no punishment by the laws and customs of that island for accessories in murders and felonies after the fact done, viz., for such as favour and receive the principals before their conviction, it is thought fit and ordered that such accessories shall be punished by fine or imprisonment; and for such also who convey felons out of the Island after proclamation made for their apprehension, and who break prison, and for the favourers of such offenders, and compounders with them, that they be punished by fine and imprisonment."

6. The party instigating or assisting can be charged with the principal offence in the two first cases supposed in the fifth question. He is chargeable with a specific crime, as a participator in the perpetration of the principal offence, where he is suspected of having procured the instrument of the crime, or of having otherwise aided and abetted in the perpetration of the principal offence.

7. In the several cases above suggested, the party participating can either be charged alone, or together with the actual perpetrator, at the option of the Attorney General. If he is charged alone, the previous conviction of the actual perpetrator is not necessary; the proof of the offence being sufficient to warrant the charge.

8. We have no distinctions in this respect as to different offences.

9. Respecting the legal limit of actual or constructive presence in the cases severally contemplated in the above questions, it is considered that every kind of accessory is subject to prosecution.

10. More than one person can be charged in a single prosecution. (*Vide* copy of charge, "No. 2," forwarded with Mr. James Godfray's answers to the first series of questions.)

If that which is charged as a joint offence be proved to have been an offence in which one of the accused parties did not participate, such party is liberated, and the trial of the other is continued.

11. Different offences may be charged in a single prosecution against the same party; as also an offence commited by a party alone may be charged with one committed by him jointly with another person.

12. There appears to be no limitation as to the time within which a prosecution must be instituted in cases of capital crimes.

Respecting other offences, one year is considered as the limit. No other distinction is made.

13. An offender is subject to prosecution in Jersey only for offences committed within the Island, or on the high seas.

14. There is no distinction with respect to apprehension, trial or punishment, or any of the incidents thereto respectively, between offences committed in different places within the territory subject to the criminal law of Jersey.

15. *Crimes et délits* are the designations by which offences are known in Jersey.

*Crimes* are punishable by death, transportation, banishment, the pillory, imprisonment (with or without hard labour or solitary confinement, for the whole or part of the imprisonment), or fine, according to the nature of the offence and degree of guilt.

*Délits* are punishable by fine or imprisonment, or both (with or without hard labour or solitary confinement for the whole or part of the imprisonment), and whipping. This last mode of punishment appears to have fallen into disuse.

FRANCIS GODFRAY, *Greffier.*
JAMES GODFRAY, *Advocate.*

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## No. 7.

*The Answers of Robert Pipon Marett, Esq., Advocate of the Royal Court of Jersey to the Second Series of Questions.*

Rob. Pipon Marett, Esq.
19 Aug., 1846.

Before replying to the second series of questions proposed by the Royal Commissioners, I must observe that, in Jersey, there does not exist any criminal code; that no attempt has ever been made at systematic and comprehensive legislation on the subject of crimes and punishments, and consequently that the fundamental rules of criminal law, to which those questions principally refer, are not to be found laid down in any positive enactment. The only way of arriving at a knowledge of the general principles by which the Jersey Court is guided in the administration of criminal justice, is the examination of its practice in particular instances; but, as it may be supposed, cases are not very numerous in so small a community; so that it is impossible to give a precise and satisfactory reply to the Commissioners' inquiries, no opportunity having occurred, in Jersey, of deciding on the points of law to which they relate. All that can be said is, that, in the determination of new and difficult questions, the Royal Court of Jersey has generally shown a disposition to conform itself to the jurisprudence of the English Tribunals.

1. I am not acquainted with any judgment of the Jersey Court which defines the age at which criminal responsibility begins. In cases of petty delinquency committed for the first time by children from ten to twelve years old (and I do not remember to have seen any brought up for judgment who were under the first mentioned age), the Court has generally been satisfied with delivering the offenders to their parents, with an injunction to the latter to correct them, and watch over their behaviour for the future, but has invariably punished them when found guilty of a second offence, thus in some measure acknowledging the principle that infants of the above mentioned ages are responsible to the criminal law, when it is apparent that they have not erred through ignorance or want of discernment.

2. When it is found that the person accused was labouring under mental disease at the time

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of the offence, he is necessarily acquitted, but is confined in the Public Hospital until seven of his relatives, friends or neighbours can be convened for the purpose of appointing a guardian (Curateur) to his person and property, to whose care he is then committed. In misdemeanours and other trifling offences, over which it exercises a summary jurisdiction, the Court may, if it think fit, adopt this course at any stage of the proceedings; but it cannot order the nomination of a guardian when the accusation is of so serious a nature as to require the intervention of a jury, until a verdict declaratory of the state of mind of the accused has been recorded. With regard to the *test* alluded to in the latter part of this question, the law of Jersey does not recognize any such; nor do I see how it is possible to establish a standard by which to estimate the degree of general intelligence requisite to render a party responsible to the criminal law, when it is considered how subject the human mind is to be partially disordered. A person almost idiotic may still possess a power of distinguishing right from wrong, sufficient to make him amenable to the laws, while a man of the most unclouded reason and soundest judgment in ordinary occasions may be subject to periodical aberrations of intellect, or paroxysms of monomaniacal hallucination, which so far destroy for the time his moral perception as to justify his exemption from punishment for any crime committed under their influence. It is evident, therefore, that the criminality of every act must entirely depend upon the peculiar circumstances under which it took place, without reference to the measure of reason possessed by the agent at other times: and, as these vary in each individual case, they can only be left to the appreciation of the Court or the jury.

3. It has been the invariable practice of the Jersey Court to punish married women for criminal acts committed by them without the participation of their husbands, or even in conjunction with them when it has appeared that the women were the principal agents or advisers, or spontaneously took part in their perpetration; but it has been judged that a married woman living with her husband, though separated from him in respect to property, was not accusable for receiving into a house, of which she was the lessee in her own name, goods introduced by her husband, though she knew them to have been stolen by him. (1844, Reg. *v.* Wellman and others.)

4. It would appear, from the case just quoted and from several others of a like nature to be found in the records, that the Court of Jersey, in cases of misdemeanour at least, recognizes the principle that persons, otherwise responsible to the criminal law, are not liable to punishment for offences committed by them by compulsion or while under a control which they were unable to resist.

5. The object of this question I conceive to be to ascertain what would be the fate of a person, in Jersey, if, being accused of the actual perpetration of a crime, he was found *not* to have been the *actual* agent in its commission, but to have participated therein in the several ways enumerated in the question. Supposing my interpretation to be correct, I answer that in Jersey, when there is any uncertainty as to the precise manner in which a suspected person has partaken in the perpetration of a crime, it is usual so to frame the accusation, by the introduction of appropriate clauses, as to secure his conviction whether he may have been a principal in the first or second degree, or an accessory before the fact, so that it can never be a question whether a party, not the actual perpetrator, but present at the time of the offence—or guilty of having before the time of its perpetration instigated another to commit it, though not himself present at the commission—can be convicted on a charge of actual perpretation. With respect to accessories after the fact, they could only be acquitted on an accusation of being the principal offenders.

6. As I have stated in the preceding answer, accusations are usually so worded as to include principals of the second degree, and accessories before the fact, who are always punished with the same severity as the principal offender; but persons who have become implicated in a criminal transaction by receiving stolen property—screening the offender—or favouring his escape from justice, in short, accessories after the fact generally, cannot be convicted on a general charge of participation; but it is necessary that the accusation should specify the particular act which subjects them to prosecution.

7. In Jersey every criminal may be tried alone, whatever be the nature or degree of his offence: nor is it necessary that the perpetrator of a crime should have been convicted, or even apprehended, to allow of the participator in its commission being brought to justice. All that is required is, that the perpetration of the crime, and his share in it, should be proved.

8. I am not aware of any distinction in this respect as to different offences.

9. A party is considered to have been present at the commission of an offence, however distant he may have been from the spot where it actually occurred, who, at the time of such offence, was engaged in any other act designed to further and ensure its successful perpetration.

10. Any number of persons suspected to have cooperated in the commission of a crime may be joined in one prosecution; but the accusation is considered to apply to each of them individually; and the conviction or acquittal of one of the parties, thus jointly charged, does not in any measure affect the fate of the others.

11. Whatever the number of offences imputed to a party, they may be joined in the same prosecution, whether he has committed them alone or in combination with other persons. And, where several individuals are joined in one prosecution, the offences committed by each of the co-accused alone may be charged therein, as well as those in which they have all participated.

12. That class of offences to which, in my reply to the first series of questions, I have given the name of statutory must, unless the law which created them contain some provision to the contrary, be prosecuted within a year and a day from the time of their commission. With regard to "*common law offences*," I conceive that the rule laid down by Terrien, in his commentaries on the Norman *Coûtume*, would be binding in Jersey, though I am not aware of its ever having been acted upon in respect to those crimes which he designates as "*crimes pub-*

*liques;*" an opportunity for so doing not having occurred.—"Plainte d'excez et mal-façons de corps se doit faire dedans l'an et jour du délict. Mais suite d'homicide et d'autre crime publique ne se préscrit que par laps de vingt ans; comme il est dit de crime de faux." *In l. querela. C. de fals.* Terrien. Livre XII., p. 502.

13. The jurisdiction of the Jersey Court, in regard to offences committed on land, is limited to the island itself, and the rocks around its coast: but it takes cognizance of all crimes wheresoever occurring at sea, when the ports of Jersey happen to be the first at which the guilty parties arrive after their perpetration.

14. The administration of the criminal law of Jersey is vested solely in the Royal Court; and the mode of prosecuting an offence before it is the same wherever that offence may have been committed.

15. The procedure with respect to offences created by prohibitory enactments, which are usually styled "*contraventions*," differs, as I have already explained in my previous communication, in many particulars from that which is followed in regard to offences punishable at common law. Of this last class, the less important, generally designated as "*délits*," are in most cases summarily judged by the Court alone, while those of a more aggravated character, to which the name of "*crimes*" is applied, are invariably submitted to a jury. It must be said, however, that the line which divides *crimes* from *délits* is not at all clearly defined, and that all these terms are commonly used without any kind of critical precision.

Rt. Pipon Marett, Esq.
19 August, 1846.

ROBERT PIPON MARETT,
*Advocate of the Royal Court of Jersey.*

*Jersey, August* 19, 1846.

## No. 8.

*Answers of John Le Couteur, Viscount of the Royal Court of Jersey, to the Second Series of Questions.*

J. Le Couteur, Esq. Viscount.

1. By the ancient military law up to 1831, boys of 13 years of age were called up for instruction in military exercise: but their parents were held responsible for their appearance and conduct.

Lads of 13 and 14 are constantly punished for theft.

The distinction for different offences is made by the Crown Lawyer, under judgment of the Court.

2. The proceedings would be stayed on its proof; the certificate or evidence of competent medical men, in addition to evidence, would be a sufficient test.

1742, October 5th, case of Jean Gasnier, charged with the murder of his father in law. Proceedings stayed, *previous* to the sitting of the *petty jury* (*enditement*), owing to his *dérangement*, and the case referred, by the *balance* of the Lieut. Bailly, to the Sovereign in Council.

3. None that I have met with.

4 to 12 inclusive, referred to the Deputy Viscount.

13. In the Bailiwick of Jersey, or for any crime committed on the high seas in a vessel coming direct into the ports of Jersey.

14. None.

15. The only classification of offences would come under the heads of criminal law, civil law (*causes civiles et mixtes*), and ecclesiastical law.

In all three, offenders are punishable by either imprisonment or fine, or both.

JOHN LE COUTEUR, *Viscount.*

## No. 9.

*Answers of John P. de St. Croix, Deputy Viscount of the Royal Court of Jersey, to the Second Series of Questions.*

Jno. P. De St. Croix, Esq.

4. Yes, in that of a wife under the control of her husband, and a child under the control of a parent.

5. The indictment being framed upon the report of the police of the parish in which the offence is committed, it is usual for the police to endeavour to obtain as much information as possible, relative to the facts connected with the offence previous to the report being entered before the Court, so that, if there are several offenders concerned in the same offence, they are included in the reports, and the indictment is framed accordingly. The offenders may be charged in the same indictment upon several counts, so as to include all the offences mentioned; and the jury may find a prisoner guilty of one or more of the counts contained in the indictment, or otherwise, as the case may be.

The following is an extract from the code of laws, of 1771, page 171, applicable to this question.

"Conformément à l'ordre duconseil de 1635, le 12 Juin, 'ceux qui seront accessoires en crimes de meurtres, ou qui en félonie, après le crime commis, recevront ou favoriseront les coupables avant leur conviction, ou qui emporteront ou favoriseront l'évasion des coupables hors de l'isle, après que proclamation aura été faite de les appréhender, et ceux qui briseront la prison, ou assisteront tels délinquants, seront punis par amende et emprisonnement."

6. The answer to the fifth question also applies to this one.

7, 8, and 9. I know of no cases in point, nor of any law applicable thereto; these questions had better be submitted to the law officers of the Crown.

10. Yes; the accused party who did not participate is immediately released.

11. Yes.

12. I know of no limits affecting the institution of a criminal prosecution.

JOHN P. DE ST. CROIX, *Deputy Viscount.*

JERSEY.

*Answers to Questions.*

SERIES III.

Bailiff and Jurats of Royal Court. 10 August, 1846.

# ANSWERS TO THE THIRD SERIES OF QUESTIONS.

## No. 1.

*The Answer of the Bailiff and Jurats of the Royal Court of Jersey to the Third Series of Questions.*

1. The reply to this question will be found in the answer of the 17th query to the First Series.

2. When a case is to be tried by a jury on an act of accusation or indictment, the evidence of the witness is written down in answer to questions, also reduced into writing, put to to him at the time by the Attorney General and the counsel for the accused. If the case be proceeded with upon the Report of the police officer, or without any formal act of accusation, then the evidence is not written down, but is taken by the Court *vivâ voce*. There is no difference made in this respect at different stages of the proceedings.

3. An oath is administered to every witness before he deposes. There is no difference made in this respect at any stage of the proceedings.

4. When an individual has attained years of discretion, and is of sufficient intelligence to understand the solemnity and importance of an oath, he may be allowed to give evidence before the Royal Court.

5. We are not aware that any case is to be found in our records upon this point: but we have no doubt that the want of religious belief would be held to be a valid objection to the competency of a witness.

6. Conviction of one or more crimes which render a person infamous would also render him incompetent as a witness for or against a party charged with an offence.

7. This competency would be restored by a pardon or reversal of the judgment.

8. A party charged with an offence may be admitted as a witness for the Crown, but not for another party charged with the same offence.

9. Yes, upon the application of the Attorney General.

10. It is usually required that such evidence should be confirmed by extrinsic evidence, and in such case to the extent that may satisfy the jury that the witness has declared the truth.

11. The husband cannot be admitted as a witness for or against the wife, nor the wife for or against the husband, when either of them is charged with an offence; except when a crime has been committed by one against the other, and there are no other witnesses of the facts.

12. Witnesses within the degree of uncle and nephew cannot be heard for or against each other, except in the case of a crime committed against the witness by a relation within the prohibited degree, or which has taken place in the family circle when there are no other witnesses of the facts.

13. The party charged is never questioned by the prosecutor or by the Court.

14. The statements of the party charged, and his conversations with third persons, are admissible in evidence against him.

15. Statements made by the party charged under the influence of a promise or threat would not be admissible in evidence.

16. The confession of a party charged with an offence would be considered as conclusive evidence of his guilt, unless he should on his trial adduce evidence in proof of his innocence.

17. The examination of all witnesses is confined to those facts which they know of their own knowledge. But a witness may give evidence of the dying declaration of a person deceased, who at the time of making such declaration believed himself to be dying.

18. A witness will not be permitted to state in evidence the contents of a written document without producing it or shewing it, or shewing to the satisfaction of the Court that it has been lost or destroyed, or otherwise accounting for its non-production.

19. If the Attorney General had in his possession an important document, the production whereof were required by the party charged, the Court would rule that it be produced. But we do not think that the party charged could be compelled to produce a document which might criminate him. The refusal of the prosecutor to produce the document in his possession would authorise the introduction of other evidence of its contents. The refusal would be established by act of the Court.

20. When there are attesting witnesses to the execution of a written instrument, they ought all, if possible, to be produced. In case of the death or absence of all or any of the attesting witnesses, proof of their handwriting, and of that of the party executing the instrument, would be required.

With respect to the age of an instrument, the question can seldom, if ever, arise in Jersey, where a general registry exists; and we are not aware of any decision upon the point.

21. Acts of the Court, contracts or deeds of conveyance, and other documents passed, or acknowledged by or before the Court, being registered, prove themselves. But acts or documents of other public bodies or persons in authority, if the authenticity of them be denied, must be proved by witnesses.

22. Evidence in favour of the character of the party accused may be given at any stage of the proceedings prior to a *Grande Enquête*. Such evidence may be contradicted. Evidence of particular acts of good conduct may be received for the party accused.

23. A witness can refuse to answer a question on the ground that the answer may subject him to criminal liability: but he cannot refuse to answer because it may subject him to civil liability, or that it may discredit him.

24. Evidence may be given of the bad or good character of a witness: but such evidence

should be confined to general reputation. Such evidence, if given, is allowed to be met by opposing evidence to rebut the character given.

25. A witness may be asked, with a view of impeaching his present testimony, what he has formerly said. Evidence may be given to contradict his answer.

26. The general rule is, that two witnesses are necessary to establish a fact; but the evidence of one credible witness, whose testimony is corroborated by extrinsic evidence, would be held sufficient to establish a fact.

27. In criminal cases the witnesses are not paid.

Bailiff and Jurats of Royal Court. 10 August, 1846.

J. DE VUELLE, *Bailiff.*
E. S. BISSON, *Jurat and Lt. Bailiff.*
PHILIP DE ST. CROIX.
PH. W. NICOLLE.
C. BERTRAM.
JOHN LE COUTEUR.
PH. PICOT.
JOHN PELGUÉ.
PHIL. LE GALLAIS.
FRS. ARTHUR.
} *Jurats.*

*Jersey, August* 10, 1846.

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No. 2.

*Answers of Philip Le Maistre, Jurat of the Royal Court of Jersey, to the Third Series of Questions.*

P. Le Maistre, Esq.

1. Witnesses for or against a party charged are always heard in presence and hearing of the prosecutor and accused party, but not before the Court which has to decide the charge, depositions being taken only before the bailli and two jurats, who form the *nombre inférieur* (inferior Court).

2. The evidence is taken down in writing, in answer to written interrogatories on the part of the prosecution and of the party charged. The same course is pursued at every stage of the proceedings.

3. In every case, and at every stage of the proceedings relating to a criminal charge, witnesses depose under the sanction of an oath.

4. This is left entirely at the discretion of the Court, there being no age fixed by law before which a person cannot give evidence.

5. I am not aware that any person has ever been excluded from giving evidence on the ground of want of religious belief; nor do I think that that question has ever been mooted before this Court.

6. The laws of Jersey have not provided against this contingency; but the evidence of a person having been previously convicted of felony would be received with a good deal of caution; indeed, it would be dispensed with altogether, if possible.

7. I know of no instance of the competency of a witness having been restored; I, therefore, cannot state in what manner it would be done, there being no law to that purpose.

8. A party charged with an offence can be heard as a witness, either for or against another party charged with the same offence: but it is had recourse to only where no other satisfactory proof can be adduced. It is then styled "*Jurer pour la Reine*" (turning Queen's evidence),

9. Yes.

10. The extent of the extrinsic evidence would rest entirely with the Court.

11.—12. An order in Council of the 14th December, 1842, has provided for these cases in the following manner:—

"Article 1. Les parens ou alliés qui, à cause de leur parenté ou alliance, ne seraient point témoins *idoines* dans les causes ordinaires, pourront (à l'exception du mari et de la femme) être entendus comme informateurs dans une poursuite criminelle, pour des faits réputés criminels, commis vers eux, ou qui auront eu lieu, au sein de la famille, lorsqu'il n'y aura point d'autres témoins de ces faits."

"Article 2. L'époux ne pourra être entendu contre son conjoint, excepté dans le cas d'une poursuite criminelle, pour un crime commis contre son conjoint, lorsqu'il n'y aura pas d'autres témoins des faits."

13. The Court never questions the party accused touching the offence with which he is charged, nor in explanation of the evidence relating to it.

14. Some of the police have often made it a practice of extorting confessions from parties accused of crimes and misdemeanours, which confessions were afterwards embodied in the report of the constable, and consequently admitted in evidence against them: but the attention of Sir Edward Gibbs was called to that important fact; and His Excellency adopted certain measures to prevent the reoccurrence of such an unwarrantable practice; so that the evil complained of has ceased to exist, or at all events it has diminished in a considerable degree.

15. Those statements or confessions are undoubtedly made under the influence of promise or threat; but, it being unknown to the Court, they are received as part of the evidence.

16. The confession of a party charged would be conclusive evidence of his guilt if he did not retract it; but he is, notwithstanding that confession, permitted on his trial to adduce evidence in proof of his innocence. Sometimes, in cases of misdemeanor, or petty theft, &c., a party charged admits the facts stated in the report in order to avoid a long imprisonment; or, if is he not a native, it is not uncommon in parties accused to offer to leave the island, in order to avoid any further prosecutions; which, if accepted, subjects such offenders to banishment of from three to five years.

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P. Le Maistre, Esq.

17. The examination is confined to those facts which the witness knows of his own knowledge. The declaration of a person who, at the time of his making it, believed himself to be dying, would be received, provided such evidence be attested by two competent witnesses.

18. A witness may state in evidence the contents of a written document; but the Court would order the production of it. If it were lost or destroyed, the evidence of the contents would be deemed sufficient.

19. The Court could not compel a party to produce a written document which would go to incriminate him, but would permit the introduction of other evidence of the contents. The refusal would be established by an act of the Court to that effect.

20. The evidence of two witnesses is required to prove the execution of a written instrument; all the attesting witnesses must be produced. In case of the death of any of them, proof of their hand-writing would be required. The age of an instrument in criminal proceedings makes no difference in the mode of proof. There is no period after which execution of the instrument is presumed without proof.

21. An act of the Court is considered authentic when it is signed and attested by the clerk (*greffier*) of the Court.

22. Evidence of the character of the party accused may be given for or against him at any stage of the proceedings. It may also be contradicted. Evidence of particular acts of good or bad conduct may be given in proof of character.

23. A witness is not compelled to answer a question which might subject him to criminal liability, or discredit him.

24. Evidence can be given of the good or bad character of a witness upon general reputation or particular facts. It may be met with to any extent by the opposite party.

25. A witness can be cross-examined to any extent as to facts bearing upon what he has formerly said. Evidence can be given to contradict this answer.

26. Two witnesses, at least, are necessary to prove particular facts; but an indefinite number can be heard.

27. Witnesses in criminal proceedings are not paid for their attendance.

PHILIP LE MAISTRE, *Jurat of the Royal Court.*

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No. 3.

Francis John Le Couteur, Esq.

*The Answers of Francis John Le Couteur, Advocate of the Royal Court of Jersey, to the third Series of Questions.*

1. All evidence must be given in the presence and hearing of the prosecutor and accused party, and of the president or vice president, and two jurats. The jury decides on the charge; and a quorum of at least seven jurats is required. There is no difference made, in this respect, at any stage of the proceedings.

2. The evidence is taken down in writing in answer to oral interrogations on the part of the prosecution and of the party charged. There is no difference made in this respect at any stage of the proceedings.

3. It is required by the law of Jersey that all evidence relating to a criminal charge shall be given under the sanction of the oath of the witness.

There is no difference made in this respect at any stage of the proceedings.

4. A person cannot give evidence before he is seven years old.

5. Yes.

6. Conviction of a criminal offence renders a person incompetent as a witness.

7. The competency of such a person can be restored by a pardon.

8. A party charged with an offence is capable of being a witness for the crown, but not for another party charged with the same offence.

9. It is in the discretion of the court to direct whether a party so charged should or should not be permitted to give evidence for or against another party charged with the same offence.

10. It is necessary that the testimony of such a witness should be confirmed by extrinsic evidence, to the extent that he may satisfy the jury.

11. The husband cannot be a witness for or against the wife, nor the wife for or against the husband, unless a crime have been committed by one against the other.

12. Incompetency does arise within the degree of uncle and nephew.

13. It is not competent to the prosecutor or to the court, at any stage of the proceedings, to question the party charged touching the offence with which he is charged, or in explanation of the evidence given by any of the witnesses produced in support of the charge or for the defence.

14. Statements of the party charged, or his conversations with third persons before or after he has been charged with the offence, are admissible in evidence either for or against him.

15. If such statements have been made by the party charged under the influence of a promise or threat, they are inadmissible in evidence.

16. The confession of a party charged with an offence is conclusive evidence of his guilt. He is, notwithstanding such confession, permitted on his trial to adduce evidence in proof of his innocence.

17. The examination of a witness, whether against or in favour of the party accused, is confined to those facts which the witness knows of his own knowledge. He may not be examined as to what he has learned touching the matter in dispute from declarations, written or oral, of third parties. There is, however, an exception in the case of a person who, at the time of his making a declaration, believed himself to be dying.

18. A witness will not be permitted to state in evidence the contents of a written document without producing it, or showing to the satisfaction of the Court that it has been lost or destroyed, or otherwise accounting for its non-production.

19. If either the accuser or the accused seeks to give evidence of the contents of a written document which is in the hands of the opposite party, the party in whose possession it is can be compelled by the Court to produce it.

20. When there are attesting witnesses to the execution of a written instrument, they ought all to be produced. In case of the death of all or any of the attesting witnesses, proof of their handwriting is required. As to the age of an instrument, there is no decision upon that point.

21. All acts of the Court are registered by the *greffier* (or clerk) in the rolls of the Court; that is deemed sufficient proof. But acts of other bodies or persons acting in the execution of any specific authority must be proved by witnesses.

22. Evidence in favour of the character of the party accused can be given, after the witnesses for the prosecution have all been heard. Such evidence may be contradicted. Evidence of particular acts of good conduct can be given in proof of character.

23. A witness can refuse to answer a question put to him, on the ground that the answer may subject him to criminal liability; but he cannot refuse to answer because it may subject him to civil liability, or that it may discredit him.

24. Evidence can be given of the bad or good character of a witness. Such evidence is not confined to general reputation; it may introduce particular facts. Such evidence is allowed to be met by opposite evidence to any extent.

25. A witness may be asked, with a view of impeaching his present evidence, what he has formerly said; and evidence be given to contradict his answer.

26. The general rule is, that two witnesses are necessary for the establishment of a particular fact.

27. In criminal cases witnesses are not paid.

FRANCIS JOHN LE COUTEUR.

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## No. 4.

*Answers of John Hammond, Advocate of the Royal Court of Jersey, to the Third Series of Questions.*

J. Hammond, Esq.
24 August, 1846.

1. All the evidence in criminal trials is taken in presence of the prosecutor and the accused, in open court, except when, for reasons stated in a previous answer, it is necessary to hear evidence before the Viscount; and then it is also taken in presence of the prosecutor and the accused. The witnesses do not depose before the jury; the evidence is only read over to the jury (as already explained), in the absence of the witnesses. There is no difference of proceeding respecting the evidence during the progress of the trial.

2. The witnesses depose orally in open Court on questions put by the prosecutor, the Court, or the prisoner. The questions and the witnesses' answers are then reduced to writing; and, at the close of the examination, the witnesses subscribe their name to their respective depositions.

3. All the evidence on the trial must be given on oath. In answer to the latter clause of this question it may be proper to remark, that persons giving evidence at a coroner's inquest are not on oath; and therefore in cases of murder or manslaughter, where a verdict has been given by that body, the information on which the decision of the members of the inquest is founded is not given under the sanction of an oath.

4 and 5. We have no definite law regulating the questions here referred to. Capacity of understanding and religious belief are both required to render the testimony of an individual valid; and, before a person of tender years be sworn, it is usual for the Court to inquire of the proposed witness, not only his or her age, but also to ascertain his or her knowledge of the nature of an oath, and how far he or she is influenced by religious belief. So with regard to adults, if the objection be raised, the Court will, before admitting the witnesses, question them on their belief in God, and on their view and conception of the responsibilities of the oath about to be administered to them.

6. By our practice, I conceive that a person convicted of a crime subjecting him or her to a "*punition infamante*" is thereby rendered incompetent to give evidence.

7. A pardon from the Sovereign would restore the convicted person's competency.

In consequence of questions having arisen at different times as to the right claimed by persons calling themselves "Quakers," or declaring their conscientious objections to take an oath, to be heard as witnesses on their mere affirmation,—the States of the island framed the law, quoted in the margin,* in order to assimilate our procedure to that observed in England, as enacted by

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* 1842, Mars 7.—Monsieur le President ayant remis à cette assemblée, en vertu d'un acte de la Cour Royale, certain Ordre de sa très Excellente Majesté en Conseil transmettant, pour être enrégistrés dans les rôles de cette île, deux Actes du Parlement, le 1r daté le 27 Juin, 1828, et le second daté le 28 Août, 1833, par lesquels il est préscrit que les membres des sociétés religieuses dénommées "Quakers" et "Moraves" seront admis à faire une declaration solemnelle au lieu de prêter un serment dans certains cas prévus par les dits actes,

Paroissant que l'Ile de Jersey n'est point mentionnée dans les dits Actes de Parlemen

Considérant qu'il est convenable de déferer au veu du gouvernement qui est donner aux dispositions des dits Actes de Parlement force de loi dans cette île:

Les Etats ont adopté le réglement suivant, pour qu'il ait force de loi et soit observé dans cette île après avoir reçu la sanction de sa trés Excellente Majesté en Conseil.

ART. 1.—Toute personne, membre d'une des sociétés religieuses dites "Quakers," ou des frères unis appelés "Moraves," sera admise à déposer comme témoin ou informateur dans les causes criminelles, civiles ou

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*Answers to Questions.*

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J. Hammond, Esq. 24 August, 1846.

the two statutes therein referred to. This law has not yet received the sanction of Her Majesty in council. It will be observed that, by the 6th and 7th Articles of this law, it is proposed to regulate, for the future, concerning the matters adverted to in the 6th and 7th questions.

8. The only case in which a party charged, jointly with another or others, with a criminal offence can be heard as a witness is when such party is admitted king's evidence (*A jurer pour le roi*).

9. This depends entirely upon the discretion of the Court, who decides after hearing the prosecutor for, and the other parties charged against, such a proceeding.

10. The unsupported testimony of an accomplice would not, I think, satisfy a jury and operate the conviction of the co-accused. Some corroborating evidence would, I apprehend, be required: but its nature and extent must depend upon the circumstances of the case.

11 and 12. The questions herein referred to are now regulated by the following law. I add the preamble, as it refers to the law as it stood previous to this enactment.

"L'an 1842, le 14 Décembre,

"Considérant que, par l'ancienne loi du pays, expliquée par plusieurs jugemens du corps de la cour, les parens ou alliés, jusqu'au dégré d'oncle et de neveu, ne peuvent être entendus comme témoins ou informateurs en matières criminelles, d'où il peut resulter des abus, ce mode pouvant quelquefois assurer l'impunité à un criminel qui aura commis un crime au sein de sa famille, lorsqu'il n'y a pas d'autres témoins que les parens au dégré prohibé; ont resolu, moyennant la sanction de sa très Excellente Majesté en Conseil, d'établir le réglement suivant."

Article 1. "Les parens ou alliés qui, à cause de leur parenté ou alliance, ne seroient point témoins *idoines* dans les causes ordinaires pourront (à l'exception du mari et de la femme) être entendus comme informateurs dans une poursuite criminelle pour des faits reputés criminels, commis vers eux, ou qui auront eu lieu au sein de la famille, lorsqu'il n'y aura point d'autres témoins de ces faits."

Article 2. "L'époux ne pourra être entendu contre son conjoint excepté dans le cas d'une poursuite criminelle pour un crime commis contre son conjoint, lorsqu'il n'y aura pas d'autres témoins des faits."

This law was confirmed by an order of council on the 1st of February, 1843.

13. At no stage of the proceedings is the accused subjected to any interrogatories, either on the part of the prosecutor or of the Court.

14 and 15. Declarations made by the party charged under the supposed circumstances (provided they be not the result of the coercion of menace, or the enticement of promise) may be received in evidence: but statements arising from threats or promises are inadmissible.

16. The free and voluntary confession of guilt, on the part of an accused person, is always strong evidence against him; but, except reiterated in his plea before the Court, no extra-judicial confession will debar him of all his usual means of defence, either by evidence or otherwise.

17. In Jersey it is a received principle of jurisprudence that hearsay evidence is not admissible. This principle would equally apply to the testimony of a dying person, or who considers himself so.

The declaration of a person at the point of death in consequence of violence upon his person will, under those circumstances, be received after his death through the medium of the testimony of third persons.

The more usual mode, when practicable, is to reduce such declaration into writing at the time it is made by the dying person, and then to prove it subsequently in Court by the persons present. But, should cirumstances not admit of writing down the declaration of a dying man, I consider that his oral communication to those around him would be received in Court through the medium of those who heard him, although such declaration was not made under the sanction of an oath, in consideration of the peculiarly solemn position of the individual at the time of making it.

18. I conceive that in the supposed case a witness would be allowed to depose respecting a written document, the substance of which was pertinent to the question at issue, and might state

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ecclésiastiques de cette île, sur sa déclaration et affirmation solemnelle, au lieu d'être tenu de prendre le serment ordinaire.

ART. 2.—Toute personne, membre d'une des dites sociétés religieuses, sera aussi admise à substituer au serment ordinaire sa déclaration et affirmation solemnelle devant tous Magistrats ou autres fonctionnaires publics autorisés à recevoir ou à administrer un serment, en produisant au Magistrat ou autre fonctionnaire un certificat qui constate qu'elle est membre de l'une ou de l'autre de ces sociétés.

ART. 3.—La déclaration et affirmation solemnelle mentionnée dans les deux articles précédents sera faite dans les termes suivans:—"Je, A. B., étant membre de la société religieuse des "Quakers" (ou de la société religieuse des frères unis appelés "Moraves," selon la société dont le déclarant est membre), solemnellement, sincèrement et en toute vérité déclare et affirme."

ART. 4.—Toute déclaration et affirmation faite en conformité à la présente loi aura la même force et authenticité que le serment devant les cours de justice et autres autorités où un serment est requis.

Celui qui volontairement et sciemment aura fait une fausse déclaration, laquelle, si elle avoit été faite sous la foi du serment, l'eût rendu passible du peine du parjure ou de quelqu'autre punition, sera sujet aux mêmes peines et pénalités ou sera sujet aux peines et pénalités attachées au faux serment par quelque loi spéciale lorsque la déclaration et affirmation aura été substituée au serment requis par cette loi.

ART. 5.—Dans les accusations et poursuites pour le crime de faux en écriture authentique ou privée, ou vers une personne qui auroit circulé une pièce fausse, ou s'en seroit servie, ou qui auroit aidé, assisté, ou participé à l'un ou à l'autre des dits crimes, toute personne au préjudice de laquelle le crime auroit été commis sera reconnue témoin ou informateur *idoine* et admise à déposer nonobstant l'intérêt qu'elle puisse avoir dans l'issue du procès.

ART. 6.—Toute personne atteinte et convaincue d'un crime qui n'entraine point la peine de mort, et qui aura subi la peine prononcée contr'elle, rentrera dans ses droits civils comme si elle avoit reçu un pardon sous le grand sçeau ou par un ordre de sa Majesté en Conseil, sauf néanmoins que la présente disposition n'empêchera ni n'adoucira la peine qui seroit attachée à un crime subséquent.

ART. 7.—Toute personne condamnée pour un crime au-dessous de félonie (sauf le crime de parjure ou subornation de témoins), et qui aura subi la peine prononcée contr'elle, sera admise à déposer comme témoin ou informateur devant toutes cours et dans toutes procédures civiles et criminelles.

J. Hammond, Esq.
24 August, 1846.

the general tenor and scope of such document if the witness was the legitimate possessor of such a deed, and could explain satisfactorily why he could not produce it.

19. During the course of my practice, no case that I can recollect has ever come under the notice of the Court where this question has occurred. Nor is it likely to arise, if we consider the nature of our criminal proceedings.

There is no other accuser than the Crown Officer, who, in his official capacity, is public prosecutor: and therefore the fact of his suppressing or withholding any documents which have come into his hands in his aforesaid capacity, and which may tend to throw light on the question pending between him and the accused, can scarcely be supposed. On the other hand, I conceive that no accused person could be compelled, or even called upon, to produce evidence against himself. But, under the supposed circumstances, I presume that the best evidence which the nature of the case would admit of would be received by the Court.

20. Documentary evidence is not often had recourse to in criminal cases: but I presume that, as to the mode of receiving and establishing such evidence, there would be no difference between civil and criminal cases. If the instrument were holograph, the individual's handwriting, as well as his signature, would have to be proved. If there were witnesses to the deed, those witnesses must be heard. If one or more were dead, their death must be proved to justify their not being produced: and their attestation must be proved by other evidence. The mode of proof would not necessarily be affected by the age of the instrument; the validity of the instrument itself might; for instance, if it were a private deed (*sous seing privé*), it might be obsolete and null by age. As regards public documents duly registered and enrolled, I conceive their validity would be the easier recognised from the fact of these documents having been received and admitted, and known for a long period. These remarks, however, are not founded on any law of the island.

21. We have no peculiar rules respecting the proof of these documents. Acts of courts of justice, or of corporate bodies, are received under the respective seals of the court or body whence they emanate, accompanied with those formalities, if any, which may be peculiar to the country or body where the deed has originated.

22. Pending the trial, evidence as to character may be given for the party accused; and specific acts may be particularized to give weight to such evidence, which is always open to the cross examination of the Crown Officer. If the accused is convicted, the prosecutor may bring forward previous convictions against the convict, to justify a motion for the severity of a proposed punishment.

23. By our practice, no man ought to be exposed to self-crimination by his answers to questions put to him as a witness; and, if he have a reasonable apprehension that his answer to a question proposed may tend to subject him to criminal liability, he may refuse to give it. I question whether the rule, with us would be extended to the other two supposed cases.

24. Evidence can be given of the character of a witness. If in a sinister sense, it is usual (though in criminal cases not absolutely necessary) to precede such evidence by a recusation against the objectionable witness. Particular facts may be shown in evidence; and the other party has full power to rebut by proof the evidence adduced.

25. A witness can be questioned as to what he may have previously said, whether judicially or extrajudicially; and evidence may be given to show any discrepancy or contradiction in his declarations.

26. The general rule recognized in this bailliwick is, that two witnesses at least are required to establish a particular fact.

27. In criminal prosecutions witnesses are never paid.

JOHN HAMMOND, *Advocate.*

*August* 24, 1846.

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## No. 5.

*The Answers of Francis Godfray, Advocate of the Royal Court of Jersey, to the third Series of Questions.*

Francis Godfray, Esq.

1. This question has already been answered. When a witness is produced against or for a party charged with an offence, the evidence must be given by the witness in the presence and hearing of the Attorney General (who is *ex officio* the sole prosecutor of all crimes and offences), the accused party and his advocate, and before the Royal Court.

2. This question has also been answered previously. If the offence is to be tried by the Royal Court, the evidence is given *vivâ voce.* If the offence is to be tried by a jury, the evidence is written down, as I have already stated. The question is put to the witness when he appears before the Royal Court; the question is then written down by an attorney and read aloud by him; the witness answers *vivâ voce;* and his answer is written down and read. When the witness has answered all the questions put to him by the Attorney General and the Court, if he is called to support the accusation, the party charged may cross question him, or put him any other questions which he thinks proper. If the witness is called for the defence, the Attorney General may question him when he has answered all the questions put to him by the party charged, or his advocate.

3. It is required that all evidence relating to a criminal charge be given under the sanction of the oath of the witness.

4. The law has not fixed the age before which a person cannot give evidence.

5. A person may be excluded from giving evidence against a party charged with an offence, on the ground of want of religious belief.

6 and 7. I do not consider that a person who has been condemned *à une peine infamante*

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can be heard as a witness in a criminal prosecution, especially whilst he is undergoing his punishment.

8. A party charged with an offence is not capable of being a witness, either for or against another party charged with the same offence.

9. The Court cannot direct whether a person so charged should or should not be permitted to give evidence for or against another party charged with the same offence. The only exception is, when a party charged offers "de jurer pour la Reine;" the Court may, with the recommendation of the Attorney General, allow him to be heard as a witness; but then he stands acquitted, unless it appear that he has been guilty of perjury.

10. In case such evidence is admitted, it is necessary that the testimony of such a witness should be confirmed by extrinsic evidence.

11. The husband and wife cannot be heard for or against one another, unless for an offence committed by one of them against the person of the other.

12. No person within the degree of uncle and nephew to the person charged can be heard for or against him, unless for an offence committed in the presence of the family, and when no other witnesses were present.

13. It is not competent to the prosecutor or to the Court, at any stage of the proceedings, to question the party charged touching the offence with which he is charged, or in explanation of the evidence given by any of the witnesses produced in support of the charge, or for the defence.

14. The statements of the party charged, or his conversations with third persons, before or after he has been charged with the offence, are admissible in evidence against him.

15. If statements have been made by the party charged under the influence of a promise or a threat, it renders them inadmissible in evidence.

16. A party charged is, notwithstanding his confession, permitted on his trial to adduce evidence in proof of his innocence.

17. The examination of a witness, either against or in favour of a party accused, is confined to those facts which the witness knows of his own knowledge. He cannot be examined as to what he has learned, touching the matter in dispute, from declarations, written or oral, of third parties. The solemn declaration of a person who believes himself to be dying at the time he makes it is received in evidence.

18. No.

19. A party may give evidence of the contents of a paper in the possession of the other party; but there are no means of forcing a party charged to produce any document he may have in his possession. The Attorney General, being the prosecutor, could not refuse to produce a document that would throw light on the accusation.

20. All deeds relating to landed or real property must be passed before the Royal Court, and are signed by the bailli and two jurats: they are immediately registered in a public office, called the registrar's office; and the original is returned to the purchaser—sometimes a copy is given to the other party, equally signed by the bailli and jurats. The original document, or a copy taken from the registrar's office, and signed by the *enregistreur*, is received in evidence. When there are witnesses to the execution of any other instrument, they must all be produced; the law never requires more than two attesting witnesses to any document. In case of the death of all or any of the witnesses, proof of the handwriting of the witnesses is required.

21. The production of the record of the Court, or the copy of any act of the Court, duly signed by the greffier, is a sufficient proof of such an act.

22. The party accused may produce evidence in favour of his character. Such evidence may be contradicted. Evidence of particular acts of good character may be given in proof of character.

23. A person may refuse to answer a question put to him, on the ground that the answer may subject him to criminal liability, but not on the ground that it may subject him to civil liability, or that it may discredit him, provided the question is material to the trial.

24. Evidence may be given of the bad character of a witness; and it is not confined to general reputation: it may be met by opposite evidence, to repel the charge against the witness.

25. A witness may be asked, with a view of impeaching his present evidence, what he has formerly said; and evidence may be given to contradict his answer.

26. Two witnesses are generally necessary to establish a fact.

27. Witnesses are not paid for their time or expenses.

FRANCIS GODFRAY, *Advocate.*

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No. 6.

Francis Godfray Greffier. and James Godfray, Esqrs. 12 August, 1846.

*The Answers of Francis Godfray, Esq., Greffier, and James Godfray, Esq., Advocate, of the Royal Court of Jersey, to the third Series of Questions.*

1. When a witness is produced against or for a party charged with an offence, the evidence is given by the witness in presence and hearing of the prosecutor and accused party, and of the Court.

There is no difference made in this respect at different stages of the proceedings, except where a witness is on the eve of his departure from the Island, or where he is prevented by illness, or other reasonable causes, from appearing before Court; in which cases the "*Vicomte*" is authorized by the Court to take down in writing the deposition of such witness, which is always done in presence of the accusing and accused party.

2. Where the Court does not exercise summary jurisdiction, the witness, being called upon

to depose, first gives a *vivâ voce* statement of what he knows respecting the facts contained in the charge.

This statement is immediately taken down in writing by an attorney appointed for the purpose; and then he gives evidence in answer to questions put to him, in writing, at the time, on the part of the prosecution and of the accused party, which evidence is in like manner taken down in writing.

Where there is exercise of summary jurisdiction, the evidence of the witnesses is given orally, except in the cases mentioned in answer to the first question, in which the *Vicomte* takes the evidence down in writing, in order to insure its production at Court when required. No other difference is made in this respect at different stages of the proceedings.

3. It is required that all evidence relating to a criminal charge be given under sanction of the oath of the witness. There is no difference made in this respect at different stages of the proceedings.

4. There is no precise age before which a person cannot give evidence.

This is left to the discretion of the Court.

5. A person can be excluded from giving evidence, for or against a party charged with an offence, on the ground of want of religious belief.

6. The conviction of infamous crimes renders a person incompetent as a witness for or against a party charged with an offence.

7. The competency of such person as a witness can be restored by means of a pardon from Her Majesty.

8. A party charged with an offence can be heard as Queen's evidence against another party, charged with the same offence, but not otherwise.

9. The Court has the discretionary power to direct whether a party so charged should or should not be permitted to give evidence against another party charged with the same offence.

10. It is necessary that the testimony of such a witness be confirmed by extrinsic evidence in the essential points, and that to such extent as may be thought sufficient to establish the veracity of what he has stated.

11. The husband cannot be a witness for or against the wife, nor the wife for or against the husband, where either of them is charged with an offence, except in case of a prosecution for an offence committed by the husband against the wife, or *vice versâ*, and that there is no other evidence to the fact.

12. Persons who from consanguinity or affinity could not be competent witnesses in ordinary suits can (with the exception of the husband and wife) be heard as witnesses in criminal prosecutions for facts considered criminal, committed against them, or which have taken place in the family, in cases where there is no other evidence to these facts. The extent of such consanguinity or affinity does not go beyond the degree of uncles and nephews.

13. It is not competent to the prosecutor, or to the Court, at any stage of the proceedings, to question the accused party touching the offence with which he is charged, or in explanation of the evidence given by any of the witnesses produced in support of the charge, or for the defence.

14. The statements of the accused party, or his conversations with third persons before or after he has been charged with the offence, are admissible in evidence, either for or against him.

15. Such statements are rendered inadmissible in evidence if they have been made under the influence of a promise or threat.

16. If the confession of an accused party is made after the charge has been read to him in presence of the Court, such confession is conclusive evidence of his guilt; but an exception to this rule was made in a late instance, where a party charged was, after having pleaded Guilty, allowed to change his plea, and the trial was afterwards carried on as if he had at first pleaded Not guilty.

17. The examination of a witness, whether against or in favour of the party accused, is, in general, confined to those facts which the witness knows of his own knowledge; but he may sometimes be examined as to what he has learned touching the matter in dispute from declarations, written or oral, of third parties. In the case of a person who at the time of his making a declaration believes himself to be dying, it is a general rule that the witness be examined thereon.

18. A witness is not permitted to state in evidence the contents of a written document without producing it, or shewing, to the satisfaction of the Court, that it has been lost or destroyed, or otherwise accounting for its non-production.

19. If the accused party seeks to give evidence of the contents of a written document which is in the hands of the accuser, who is always the Attorney General, this officer is in duty bound, and the Court can force him, to produce it. If, on the other hand, the accuser seeks to give evidence of the contents of documents which may be in the hands of the accused, he (the accused) cannot be compelled to produce them; but the accuser may be allowed to prove their contents. In case of refusal, the fact of such refusal would be established in the act of the Court.

20. The signature (which is not attested by witnesses) to a written instrument must be proved by witnesses acquainted with the handwriting of the party executing such instrument. When there are attesting witnesses to the execution of the instrument, all of them, if possible, must be produced.

In the event of the death or absence from the Island of all or any of the attesting witnesses, proof of their handwriting is required. If it is impossible to procure any proofs of an instrument, on account of the remote period of its date, the Court has the discretionary power to judge of its validity.

21. The acts of the Royal Court are proved by the signature of the *greffier*. Those of

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other bodies or persons acting in the execution of any specific authority are proved by witnesses, in case the signature of the party attesting such acts be doubted.

22. The party accused can produce evidence as to his good character, at any stage of the proceedings; and the accuser may produce other evidence to contradict it. Evidence of particular acts of good conduct may also be given in proof of character.

23. A witness can refuse to answer a question put to him on the ground that the answer may subject him to a criminal liability, but not otherwise.

24. Evidence can be given of the bad or good character of a witness. This evidence must be confined to general reputation; but it may introduce particular facts. Such evidence is allowed to be met by opposite evidence, to such extent as may be thought necessary to establish the reputation of the witness.

25. A witness can be asked, with a view of impeaching his present evidence, what he has formerly said; and evidence can be given to contradict his answer.

26. The general rule is, that two witnesses are necessary for the establishment of a particular fact; but one witness is considered sufficient if his deposition is confirmed by circumstantial evidence.

27. Witnesses are not paid, either for the expense to which the inquiry has put them or for their time.

FRANCIS GODFRAY, *Greffier.*
*August 12th*, 1846. JAMES GODFRAY, *Advocate.*

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No. 7.

J. Le Couteur, Esq., Viscount.

*The Answers of J. Le Couteur, Esquire, Viscount of the Island of Jersey, to the third Series of Questions.*

1. It must, excepting the case of illness or departure which I have stated, in which the evidence is taken before the Viscount. None.

2. Answered by reply 21. Series 1.

3. Certainly on oath. None.

4. I know of no law absolutely fixing the age—it would much depend, in the case of a child, on its intelligence.

5. I have never met with such a case.

6. Conviction for perjury would render a person incompetent.

7. It could not, unless it were by a long course of subsequent unimpeachable conduct.

8. When king's evidence.

9. Answered by the previous reply.

10. The additional evidence of one or more credible witnesses would be required to insure conviction.

11. The new code of laws, page 314; rules "l'époux (the husband or wife) shall not be heard against the 'conjoint'—except in a criminal suit, for a crime committed by the 'conjoint,' when there shall be no other witnesses of the fact."

12. Any relatives may be heard if no other witnesses are to be found.

13. It is not competent.

14. They are not admissible.

15. I have never known statements to be made under such influence.

16. It is—and judgment immediately following on it. No such evidence has ever been offered that I have met with.

17. I have constantly seen it confined to what the witness knows of his own knowledge, "*les ouï-dires*" not being received as evidence.

The evidence of a dying man, solemnly taken, as in the case of Centenier Le Cronier, who was murdered by Le Gendre, was received.

18. In criminal cases not.

19 and 20. Referred to the deputy Viscount.

21. Authenticated acts of the Court may be had by either party; or the records themselves may be produced in court (for which certain fees are paid); registered acts of parliament, acts of the states, acts of parochial assemblies, would be received, when presented by an officer in whose custody they are usually.

Reports of the Viscount, his deputy, the denunciators, the constables or centeniers are presented or confirmed by themselves in Court.

22. I have heard evidence in favour of character given on the close of the defence.

The Crown lawyer would undoubtedly rebut the evidence if he believed it to be false.

23. Certainly: in either case, no man would be compelled to criminate himself.

24. It can: it might affect his reputation; or a particular fact, such as perjury, might be adduced.

25. It is constantly done: no doubt it could.

26. The *Grand Coustumier*, edition 1539, chap. lxii., folio 85, states, in the commentary on the text, "Le texte veut innuer que toutes raisons de faict, qui sont proposées en Court et nyees, s'il n'y a tesmoing, cest assavoir preuve, sont reputées vaines, car tesmoing est cy prins pour preuve et non pas pour *un tesmoing seul*." Hence, in criminal cases, two witnesses are always required in order to convict.

In cases of violations of five articles of the road law, which involve fines up to twenty livres, or imprisonment in case of insolvency, a single witness is sufficient to convict.

27. No witnesses are paid in criminal cases: nor is the sheriff paid for issuing the summonses.

J. LE COUTEUR, *Viscount.*

No. 8.

*The Answers of John Philip de Ste. Croix, Deputy Viscount of the Island of Jersey, to the third Series of Questions.*

19. No, unless the party in possession of the document choose to produce it before the Court: then the accused can insist upon its being lodged at the *Greffe* in order to its being reproduced whenever it may be required; otherwise evidence may be produced to prove its contents; the refusal would be recorded in the act of the Court.

20. The witnesses to its execution; one of the attesting witnesses will be sufficient; in case of death their hand writing must be proved.

None; but an instrument after a lapse of ten years is of none effect unless it has been registered in the records of the Court.

JOHN PHILIP DE STE. CROIX, *Deputy Viscount.*

# MINUTES OF EVIDENCE

TAKEN BEFORE THE

## COMMISSIONERS appointed to inquire into the STATE of the CRIMINAL LAW in the CHANNEL ISLANDS,

AT THE COURT HOUSE, ST. HELIER'S, JERSEY.

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*Monday* 31*st August*, 1846.

Mr. *François Godfray*,
Mr. *Charles De Ste. Croix*, } examined.

JERSEY.

Mr. F. Godfray, Greffier, and Mr. C. De Ste. Croix.

31 August, 1846.

1. (To Mr. *Godfray.*) What office do you hold?—I am greffier.
2. How long have you held that office?—Since the year 1812.
3. By whom were you appointed?—By Lord Hawnes.
4. Had you held any office before?—I had been attorney, or écrivain, to the Royal Court.
5. How long had you practised as an attorney?—From the year 1801 to the year 1812.
6. Exclusively in Jersey?—Yes; always in Jersey.
7. Do you practise still?—Being greffier, I do not practice as an attorney.
8. Have you any partner?—No.
9. By the constitution of the Court, is practising as an attorney incompatible with the office of greffier?—I do not think it is.
10. There is no rule against it?—I believe not.
11. Do you know whether it has ever been the case that a greffier has practised as an attorney?—When I was appointed, I was told by the then bailiff, Sir John Dumaresq, that I could practise as an attorney. However, from circumstances, I was obliged to give it up.
12. Do you recollect whether your predecessor practised?—No; he did not.
13. Probably you do not recollect what was the case with the person who preceded him?—I recollect the latter part of his time, but not when he was first appointed.
14. Can you say whether or not it has ever been done?—I do not think it has.
15. What are the duties of écrivain?—To act as solicitor in causes, to assist the advocate to pass public deeds, that is public contracts of sale and purchase of landed property; and he has another public duty, which is to take down the depositions of the witnesses in criminal matters, and also in civil matters. In civil matters he is paid; in criminal matters he is not.
16. (To Mr. *De Ste. Croix.*) What situation do you fill?—I am commis au greffe.
17. How are you appointed?—I am appointed by the bailiff, with the sanction of the greffier, and subject to the recall of the greffier: and I am paid by him. I am sworn by the Court.
18. Do you hold your office at the will of the greffier? Could you be dismissed by him?—I should suppose so.
19. When were you first appointed?—In the year 1833.
20. What had you been before?—I was écrivain of the Royal Court.
21. How long had you been so?—I had been so for ten years.
22. Are you so now?—I am so still, though I do not practise. I have also held the situation of advocate of the Ecclesiastical Court, and notary.
23. Have you any partner?—No.
24. Has there been any practice, analogous to that which Mr. Godfray has mentioned, that gentlemen filling your office have not practised as écrivains?—I am not aware that there has been. My reason for giving up practice, except in a few cases of a friendly nature, was that I thought, when I was appointed to my office, its functions were not compatible with my practising.
25. Has that been the general understanding before your time, do you think?—I do not think, as a matter of fact, as far as my knowledge goes, that the greffier or the commis au greffe has ever practised. The latter I do not consider a regular office, by the constitution of the island. It is entirely one of convenience, and exists by the sufferance of the Court.
26. (To Mr. *Godfray.*) Can you refer the Commissioners to any list of the records of the Court?—This (*producing the same*) is the one which was put into my hand when I was appointed.
27. What is the date of this catalogue?—3rd December, 1812. It is a report by three Jurats, James Hemery, James Hammond and Charles de la Garde, made in consequence of an Act of the Royal Court.
28. Of what do the documents under the first title consist;—"Inventaire des Rolles de la Cour Royale de l'île de Jersey?"—Of Acts of the Court and political orders.
29. When do they begin?—In 1504. There are very few of that date. They begin more regularly in 1524. I should mention that, up to the year 1797, criminal causes were treated in the Cour de Cattel. From that period they have been kept in separate books.

30. What is the date of the earliest book which you can produce?—The earliest is from 1524 to 1528 (*producing the same*).

31. That book consists of Rolls of the Court of Cattel?—Yes.

32. From 1524 down to the present time, have you the Rolls complete?—I believe they are complete. None of them is missing; but some of them are in a very bad state.

33. From 1524 down to 1797, in those records of the Cour de Cattel, there are both criminal and civil records; but subsequently to 1797 the criminal records have been kept apart?—Exactly so.

34. (To Mr. *De Ste. Croix.*) Will you state the form in which the proceedings of the Court are entered?—The entries in the book of criminal proceedings are made in the following order. The date before me is July 29th, 1846. It commences by a list of the bailli, or his lieutenant, and the jurats present, called the Entitulement. That is followed by a list of the absent jurats, stating those who are prevented attending by illness, and those who are defaulters without any excuse. This is before "Le Corps de la Cour," or "The Full Court." Each decision of the Court is entered separately. The first Act on the 29th of July is a Report of a Coroner's Jury, commonly called Levée de Corps. That is followed by a trial before the enditement. The roll of this trial consists, first of the name of the prisoner, then a recital of the accusation at length, and then it enumerates the persons composing the enditement. The Act then states the reading of the depositions, and the pleading of the prisoner. The prisoner pleads every time he is brought before the Court. The evidence previously taken in writing is then read.

35. The entry apparently contains a recital of the fact of the evidence being read, but not the evidence itself?—That is all. There may be documentary evidence also; all of which is referred to in that summary manner. The prisoner is then stated to be heard in his defence, by means of his advocate; and the Procureur Général de la Reine is heard. Les hommes de l'enditement then retire to confer in private. Being returned and agreed, they make their rapport to the Court, by means of their chairman, who is generally the constable. The Act of the Court then contains the finding, and states that the prisoner is endité criminellement. He then demands the benefit of the grande enquête; upon which, at the request of the Procureur Général, he is remanded to prison.

(*The following is the Act of Court referred to.*)

*Juillet* 29.—L'an mil huit-cent quarante-six, le vingt-neuvième jour de Juillet. Par devant Edouard Léonard Bisson, Ecuyer, Lieutenant de Messire Jean de Veulle, Chevalier, Bailli de l'Ile de Jersey, assisté de Philippe De Ste. Croix, Philippe Winter Nicolle, Charles Bertram, Jean Le Couteur, Philippe Picot, Philippe Le Gallais et François Arthur, Ecuyers, Jurés.

Philippe Marett,
Philippe Le Maistre,
et
Edouard Nicolle.
} Ecuyers, Jurés, sont en défaut excusés par maladie.

Jean Pelgué, Ec^r., Juré, est en défaut à assister à la Cour.

Messieurs Philippe Hellem, Helier Simon, Daniel Aubin, Philippe Renouf, fils Josué, Charles Huet, Charles Sullivan, Jean Moisson, George Le Gros, jun^r., Jean Coutanche, Jean Francois Lesbirel, Jean Le Ber, and Jean Philippe Ouless, actionnés par le Procureur Général de la Reine pour faire leur rapport à la justice, comment ils croient en leurs consciences que la mort est arrivée à M. Henry Edom, mort en la paroisse de St. Hélier, et ouir sur ce le rapport du Député Vicomte, ont fait leur rapport à la justice, d'opinion uniforme, comme ils avaient fait par devant le dit Sieur Député Vicomte, qu'ils croient en leurs consciences que le dit Henry Edom s'est lui même donné la mort en se pendant par le cou dans un moment d'aliénation mentale.

Pierre Marie Le Gendre, sous accusation d'avoir, mardi 19e jour de mai, 1846, ou vers ce tems là, commis un assaut grave sur la personne de la nommée Bridget Brown, et d'avoir attenté à sa vie, en lui portant un coup de couteau ou de quelqu' autre instrument, qui l'atteignit sur le derrière de la tête et lui causa une blessure grave; et d'avoir par là, le dit Pierre Marie Le Gendre, mis la vie de la dite Bridget Brown en danger; le tout selon que plus au long est contenu au rapport du centenier Le Bailly, de la paroisse de St. Hélier, et en l'Acte de la Cour, daté l'an 1846, le 23e jour de mai, convenu à l'instance du Procureur Général de la Reine, pour ouir le rapport des hommes de l'enditement de la paroisse de St. Laurens sur la dite accusation. Messrs. Jean Morel, Centenier, Edouard Laurens, Daniel Le Sueur, George Esnouf, Philippe Remon, Jean Rondel, Jean Remon, Jean De La Cour, Jean Tocque, Jean Crill, George Biguerel, Jean Le Cornu, Jean Gibaut, actionnés par le dit Sieur Procureur Général de la Reine, pour passer comme hommes d'enditement à la charge ou décharge du dit Pierre Marie Le Gendre sur la dite accusation. L'accusation a été lue au dit prisonnier, qui a sur ce plaidé et fait sa déclaration, qui a été rédigée et logée au greffe. Lecture a été donnée des dépositions des témoins ci-devant rédigées par écrit et logées au greffe, et des autres pièces de la procédure; le dit prisonnier a été entendu en sa défense par le moyen de son avocat; et le dit Sieur Procureur Général de la Reine a été ouï; les hommes de l'enditement se sont retirés, avec les pièces de la procédure, pour conférer dans le particulier; et, étant de retour, et à un accord, ils ont fait leur rapport à la justice, par le moyen du dit centenier, que le dit prisonner est plutôt coupable qu'innocent d'avoir commis un assaut grave sur la personne de Bridget Brown, le jour mentionné dans l'accusation, en lui faisant une blessure à la tête avec une pierre ou quelqu' autre instrument. Lequel verdict la Cour a reçu, nonobstant la prétention du défenseur de l'accusé qu'il n'est pas recevable, ne constatant pas la nature de l'instrument avec lequel la blessure a été causée. Partant le dit prisonnier demeure endité criminellement; et il a été renvoyé en prison, jusqu' à ce que le dit Sieur Procureur Général de la Reine fasse convenir la grande enquête du pays, dont il a demandé le bénéfice.

36. Will you state in what form the record is made of the proceedings before the grande enquête?—In the case of the grande enquête, after the entitulement, the entry commences with the name of the prisoner. It recites the accusation, and that the prisoner has been found guilty by the enditement. The names of the grand enquête are given, stating for what purpose they are summoned by the Procureur Général.

JERSEY.

Mr. F. Godfray, Greffier, and Mr. C. De Ste. Croix.

31 August, 1846.

37. Is there any entry of any challenge on the part of the prisoner?—No; that does not appear; the names only are given of the twenty four persons accepted by the prisoner.

38. Supposing the prisoner were to challenge one of the grande enquête, there would be no entry of the challenge?—No: if the challenge were allowed, the party would be removed from the jury box, and replaced by another. The plea of the prisoner is the next entry. In the case before me, there are some objections taken by the prisoner, which being over-ruled, the depositions are read, as in the case of the former proceeding. Then the defence of the prisoner is heard; and then the Procureur Général. The men of the grande enquête withdraw, with all the documents, and, on their return, make their report. In the case before me, they were divided; consequently they made their report individually to the bailiff. The accusation was one of murder. More than a sufficient number were of opinion that the prisoner was plutôt coupable qu'innocente du crime d'homicide volontaire. Then follows the entry of attainder and conviction. The prisoner is then heard by her advocate in mitigation; and then the procureur makes his conclusions. The next entry is the sentence. If the sentence be in conformity with the conclusions of the Procureur Général, the record states it. The prisoner is then remitted till the pleasure of Her Majesty is known respecting her destination.

(*The following is the Act of Court referred to.*)

Avril 21. L'an mil huit-cent quarante-six, le vingt-unième jour d'Avril.

Par devant Messire Jean De Veulle, Chevalier, Bailli de l'Ile de Jersey, assisté d'Edouard Léonard Bisson, Charles Bertram, Jean Le Couteur, Philippe Picot, Jean Pelgué, Phillipe Le Gallais, et François Arthur, écuyers, Jurés.

Après le serment de Pierre Marett, écuyer, Phillipe Marett, écuyer, Juré Justicier, a été exoîné par maladie.

Phillipe Le Maistre, Edouard Nicolle, } Ecuyers, Jurés, sont en défaut excusés par maladie.

Marie Le Noble, aliàs Marie Anne Le Noble, femme de Pierre Marie Le Gendre, et séparée de lui quant aux biens, sous accusation d'avoir, vendredi, le 27e jour de Février, 1846, ou vers ce tems là, commis le crime de meurtre sur la personne de Monsieur George Le Cronier, en portant un coup de couteau au dit Sieur Le Cronier, qui l'atteignit à l'abdomen, et lui a causé la mort; lequel Sieur Le Cronier était alors un des centeniers de la paroisse de St. Hélier, et agissant en exécution des devoirs de sa charge; le tout selon que plus au long est contenu au rapport du connétable de la paroisse de St. Hélier, et en l'acte de la Cour, daté l an 1846, le 11e jour de Mars; et la quelle Marie Le Noble, aliàs Marie Anne Le Noble, femme du dit Pierre Marie Le Gendre, et séparée de lui quant aux biens, a été enditée criminellement sur la dite accusation, comme paraît par acte de la Cour, daté l'an 1846, le 18e jour d'Avril; convenue à l'instance du Procureur Général de la Reine, pour ouir le rapport des hommes de la grande enquête du pays, dont elle a demandé le bénéfice, et voir ensuite ordonner par justice sur la dite accusation. La prisonnière, avant que de plaider à l'accusation, ayant soumis à la considération de la justice la question suivante, savoir: Que la procédure dans cette poursuite est irrégulière et nulle, pour les motifs suivans:

1°. De ce que les membres de l'enditement, réunis en Cour samedi le 18me Avril, 1846, pour prononcer sur l'accusation dirigée vers la prisonnière, ne se sont point retirés pour délibérer dans le particulier sous la garde de l'officier compétent, savoir, Jean Le Couteur, écuyer, Vicomte, quoique le dit officier fut présent à l'audience le dit jour.

2°. De ce que les pièces de la procédure n'ont point été confiées au dit officier, pour être soumises à l'examen des dits membres de l'enditement; que par conséquent la pratique voulue et usitée en pareil cas n'a pas été observée.

3°. Que, si les membres de l'enditement se sont retirés pour délibérer, accompagnés d'une autre personne non compétente, cela ne peut suppléer à l'irrégularité et illégalité signalée plus haut.

4°. Qu'en effet Jean Philippe De Ste. Croix, écuyer, ne pouvait valablement accompagner les dits membres de l'enditement, ni ne pouvait avoir la garde des pièces de la procédure, étant sans autorité pour pouvoir gérer telles fonctions.

Partant, la prisonnière ayant soumis humblement à la Cour que la dite procédure, et l'acte du dit jour 18me avril, 1846, sont nuls et sans effet,—

Attendu que la procédure a eu lieu de la manière usitée dans ce bailliage;

Qu'après que les hommes de l'enditement eurent, le dit jour 18me Avril dernier, prononcé leur verdict, il fut annoncé par le chef magistrat à la prisonnière, laquelle, par l'organe de son défenseur, demanda et obtînt le bénéfice de la grande enquête du pays;

Que l'acte fut lu publiquement en présence de la prisonnière, sans aucune objection ou réclamation de sa part, et reçut la sanction unanime de la Cour;

Attendu que Jean Philippe De Ste. Croix, écuyer, exerçait le dit jour les fonctions de Député Vicomte, des insignes de la quelle charge il était revêtu;

Que la présence momentanée à l'audience de Jean Le Couteur, écuyer, Vicomte, en son caractère privé, ne suffisait point pour interrompre le dit Sieur Député Vicomte dans l'exercise de ses fonctions;

Que ces deux fonctionnaires n'exerçaient point alors simultanément les devoirs de la charge de vicomte;

La Cour d'opinion uniforme a écarté la prétention de la prisonnière.

De la paroisse de St. Hélier:—

Jean Matthews, écuyer.
Hugh De Carteret, écuyer.
David De Quetteville, écuyer.
Monsieur Jean Josué Gabomel.
Monsieur Gautier De Ste. Croix.
Edouard De La Taste, écuyer.
Monsieur George Amy.
Monsieur Charles Bisson.

De la paroisse de St. Sauveur:—

Jean Godfray, écuyer, fils Phillipe.
Edmond Le Cornu, jun., écuyer.

David Le Geyt, gent.
Phillipe Vivian, gent.
Monsieur Abraham Grant.
Moreau Amy, gent.
Monsieur George Collas.
Monsieur Elie Neel.

Mr. F. Godfray, Greffier, and Mr. C. De Ste. Croix.

31 August, 1846.

De la paroisse de St. Laurens:—

Pierre Marett, écuyer.
Jean Hé ier De Ste. Croix, écuyer.
Hélier Le Rossignol, gent.
Jean Le Cappelain, gent.
Monsieur George Frederic Dupré.
Edouard Le Maistre, jun., gent.
Phillipe Bertant, écuyer.
Monsieur Elie Amy.

Actionnés par le dit Sieur Procureur Général de la Reine pour passer comme hommes de la grande enquête du pays à la charge ou décharge de la dite Marie Le Noble, aliàs Marie Anne Le Noble, femme de Pierre Marie Le Gendre, et séparée de lui quant aux biens, sur la dite accusation. Les hommes de la grande enquête ont été assermentés, comme en tel cas est requis et accoutumé. L'accusation a été lue à la prisonnière; et elle a sur ce plaidé et fait sa déclaration, qui a été rédigée et logée au greffe. Lecture a été donnée des dépositions des témoins, ci-devant rédigées et logées au greffe, et des autres pièces de la procédure. La prisonnière a été entendue en sa défense, par le moyen de son avocat; et le dit Sieur Procureur Général de la Reine a été ouï. Les hommes de la grande enquête se sont retirés, avec toutes les pièces le la procédure, pour conférer dans le particulier: et, étant de retour, ils ont fait leur rapport à la justice; savoir: un nombre suffisant d'entr' eux, qu'ils croient en leurs consciences que la dite Marie Le Noble, aliàs Marie Anne Le Noble, est plutôt coupable qu'innocente du crime d'homicide volontaire. Partant elle en demeure dûment atteinte et convaincue. Ensuite, après qu'elle a été entendue par le moyen de son avocat, la Cour, conformément aux conclusions du dit Sieur Procureur Général de la Reine, a condamné et condamne la dite Marie Le Noble, aliàs Marie Anne Le Noble, a être déportée à tel lieu qu'il plaira à sa Très Excellente Majesté en Conseil d'ornonner, pour le terme de sa vie naturelle. Tous ses biens meubles et héritages, si elle en a, demeurent acquis et confisqués au bénéfice de Sa Majesté, ou du Seigneur auquel il appartient. Et elle est renvoyée en prison, jusqu'à ce que le bon plaisir de Sa Majesté soit connu touchant la dite déportation; auquel effet le greffier est chargé de transmettre copie authentique du présent acte au clerc en attendance du Conseil Privé de Sa Majesté.

39. (To Mr. *Godfray*.) What are the principal points in which the old records differ from the modern ones?—There is very little difference. The records are much more regular since the division in 1797. The Cour de Cattel was very much overloaded with both civil and criminal business.

40. Will you produce to the Commissioners, on a subsequent day, some one of the earliest records which you can find complete?—I will do so.

41. Have you among the muniments, in the form of a charter, the constitutions of King John?—We have not. A great number of the records were consumed by a fire in the early part of the 16th century.

42. Does either of the two sets of ordinances in the reign of Henry the Seventh exist?—No. We have a copy authenticated by the jurats.

43. Does the charter of Queen Elizabeth, of the 27th of June, 1562, exist in the shape of a charter?—No.

44. Does the charter of Charles the Second exist in any such form?—No.

45. Are the ordinances of the Commissioners who came over in the reign of Queen Elizabeth in existence?—Yes: we have them. Those of 1597 have not been considered as law. I believe they were not approved by Her Majesty. The question was brought before the Court about 16 years ago, as to whether they were to be considered as law: and the Court decided that, there not appearing any Order of Council confirming them, they were not binding.

46. Are the ordinances of Henry VII. considered as law in the island?—Yes; they are. There is also an ordinance of Henry VIII. One of the ordinances of Henry VII. requires the entries to be signed by the Jurats. We suppose that that ordinance must have been altered.

47. You suppose it must have been altered because the practice has been altered?—Yes. The charter of neither of the Henrys has been registered.

48. Are the entries signed in civil matters?—No.

[*The Witnesses withdrew.*]

Adjourned.

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Friday, 4th September, 1846.

Mr. *François Godfray*,
Mr. *Charles De Ste. Croix*, } further examined.

49. (To Mr. *De Ste. Croix*.) Can you now lay before the Commissioners some of the earlier entries of Acts of Court?—This (*producing the same*) is of the year 1646. 4 September, 1846.

50. Is that the earliest which you can find?—It is not the earliest; but it is the earliest that I find complete. In this entry there is the accusation, the report of the coroner's inquest, the enditement, and the grande enquête.

JERSEY.

Mr. F. Godfray, Greffier, and Mr. C. De Ste. Croix.

4 September, 1846.

(*The same is read as follows.*)

A la Cour Royale de l'Ile de Jersey. L'an mil six-cent quarante-six, le vingt-huitième jour du moys de Janvier.

André Laurens est renvoyé au chasteau jusqu' à Samedy prochain, où sera produit en Cour, Instance du Procureur du Roy, le chargeant d'avoyr p̃ditoirement donné un coup de cousteau à Janson Gerel, duquel coup la mort seroyt arivez audit Gerel.

Thom. Guille.
Pière Guille.
Gédéon le Brun.
David Bandynel.
Jean Gebault.
Jean Gebault, fils, J^n.
Phle. Geffard.
Nicoll Chevalier.
Phle. Esnouf.
Thom. Roshe.
Pière Bisson.
Michell le Brocq.

Les susdits douze hom̃es ayant visité le corps mort de Janson Gerel dans la maison où demeure à présent Anne, veufve de Thom. Aubert en S^t. Aulbin ; Tous lesquels hom̃es ont raporté croire en leurs consciences que la mort laquelle est arivez au dit Gerel a esté p̱ un coup de cousteau q̃l receult dans la mamelle droicte p̱ quelque personne, et non de luy mesme.

M^r. Jean Scelle, Conestable de la p̱rõe de S^t. Brélade, M^e. Phle. du Maresq, Phle Bisson, Thom^s. Alexandre, Thom^s. Roshe, Ed^rd. Auley, Helier Mourgier, Thom^s. Guille, Richard de Carteret, Nicolle Bas, Thom^s. Martel, Officiers dans la dite p̱rõe, Estant p̃duits en Cour, instance du p̃cur^r. du Roy p̃o^r. passer à la charge ou descharge de André Lorens. Estranger, accusé d'avoir proditorement donné un coup de cousteau à Janson Gerel, aussy Estranger, ont le dit Conestable, avecq les susdits Officiers, raporté croire en leurs consciences que la mort arrivez au dit Gerel a esté p̱^r. un coup de cousteau q̃l receult p̃ le dit André Laurens, et p̱tant qu'il est coulpable de la mort du dit Janson Gerel : suyvant ce le dit André demeure ffformellement endité, le dit Conestable et Off^rs. ayant ouy le raport de plusieurs Informateurs p̃duits p̱^r. le Procureur du Roy, lequel André, pour purga^on. du dit crime, se submet à l'Enqueste du pays de xxiiii hom̃es, de sa vie ou de sa mort.

André Laurens, se dissant natif du Royaulme de Portugal, ayant esté de long temps détenu prissonnier au Chasteau, instance du Procureur du Roy, estant accusé d'avoir p̃ditoirement frapé Jeanson Gerel, fflaman de nation, d'un coup de cousteau dans la mamelle droicte, d'où seroyt le dit Gerel tombé mort tost après ; Et sur ce le dit Laurens examiné, alégnoyt qu estant au logis d'Anne, Veufve de Thom^s. Hubert, le dit Gerel le vint quereller, et luy donna un soufflet au visage ; Et incontinent sortant pour éviter au trouble du dit logis, le dit Gerel, encores q̃l fust retins, sortit après luy avecq un grand cousteau à la main, et taschoyt à luy offenser, vers lequel le dit Laurens se deffendit aveq un baston p̱o^r. l'empescher de luy faire offense du dit cousteau, et fuyant devant le dit Gerel, tombant dans la fange, le dit Jeanson Gerel le vint fraper de son cousteau dans le ventre, d'où ses boyaulx furent veus sortir p̱ la playe ; Et dissoyt ne luy souvenir d'avoir frapé le dit Gerel de son cousteau. Sur ce plusieurs informateurs p̃duits p̱^r. le Procureur du Roy ayant été examinez, com̃e aussy le dit Laurens ayant été formellement enditté p̱o^r. le dit crime par le Conestable et Officiers de la p̱õe de S^t. Brélade ; lequel s'estant submises vollontairement à l'Enqueste du pays, de xxiiii hom̃es, de sa vie ou de sa mort, lesquels purgez de saon et jurez et sermentez com̃e en tels cas est réquis et accoustumé, et examinez selon la forme, la plusp^t. d'iceulx ont raporté, à la discharge du dit Laurens : suyvant ce, par opinion de la cour, le dit Laurens a esté desclaré exempt de la rigueur des Loix et peyne deubs à tel forfaict : Nonobstant, veu le supson, le dit Laurens est renvoyé prissionnier au Chasteau, jusqu' à ce que Messieurs de Justice en ayent communiqué à Mons^r. le Lieutenant Gouverneur pour après estre p̃cédé à son eslargissement.

51. The enditement appears here to follow the coroner's inquest?—It took place on the same day.

52. Then there was no act of the Procureur Général?—It is all at the instance of the Procureur Général.

53. The inquest itself is understood to be so, is it?—It is. In fact he may be said to preside at the inquest.

54. Technically, it is at his instance that it is presented to the Court?—Yes: it is actionné by the Procureur Général. The Commissioners will observe that this proceeding bears but one date, because the proceedings at the ordinary Cour de Cattel always bear date the first day of the Assize in which they are held. In the old records the days of adjournment of the ordinary Court are numbered in the margin, deuxième, troisième, quatrième, and so on, but always under the date of the Assize. In the modern entries we say deuxième jour, troisième jour, but also stating the date. There is considerable singularity in the above record. The Act of the grande enquête is much more in detail. It contains the interrogatory to the prisoner and his answer.

55. It appears from this record that, though the prisoner was acquitted, he was nevertheless ordered to be remanded to prison till a communication had been made to the Lieutenant-Governor. Will you explain that?—At that time the powers of the Governor were very great. There were very few strangers; and any of them might be sent out of the island by the authority of the Governor, a reason being assigned for it.

56. How would such a prerogative of the Governor be put in motion? Would it be by any formal Act of the Court?—So far as the powers of the Court are concerned, here, the prisoner is discharged from the accusation; but it does not clearly appear that he was innocent.

57. Is there anything answering to that now?—It is never done in practice; though I believe the Governor has the power of doing it still.

58. In the case before us, the prisoner, being in fact acquitted, is sent back to prison till the pleasure of the Governor is known? Would that be done in any case now?—No: the prisoner, if he were acquitted, would be at once enlarged; and then the Governor might have him taken up again if he saw cause.

59. Suppose a foreigner were to be tried for a crime, and to be acquitted, would he be in any case retained in custody?—He would be discharged at once.

60. Suppose that he is tried and acquitted, but that he is a dangerous person, and a person whom it would be proper to remove from the island: the Governor having the power to remove him, and not the Court, what would be the course taken? Would the Court commit him to prison, or order him to be committed to prison?—In any case of imminent danger, I imagine the Court would remand him, stating the reason why they did so, till the Lieutenant Governor should be in possession of the facts.

61. Mr. *Godfray*. There have been instances in which persons whom the Governor ordered to quit the island have not gone of their own accord. The Governor has had them taken up and brought before the Royal Court; and the Court enforced the order of the Governor.

62. Would that be a formal act of the Court?—There is no act of the Court. I only know of two instances of that kind, because, when the Governor has ordered strangers to go away from the island, they have generally obeyed the order.

63. Mr. *De Ste. Croix*. It is a prerogative which has not been enforced much since the peace: but there have been several instances of it.

64. (To Mr. *Godfray*.) The natural course appears to be that, the Governor having the power, he would act by his own officer, without the necessity of any proceeding before the Court?—That is the general course: but there have been rare instances in which the Governor has thought it proper to have the authority of the Court also. I have here the order of the Privy Council, of the 12th of June, 1635, in reference to strangers. "For the better government of the isle, it is likewise thought fit that the names of all strangers coming into the isle should be delivered unto the Governor, or Lieutenant Governor, within twenty four hours of their coming thither; and that no strangers dwell or marry in the isle without leave of the Governor or his lieutenant."

The following is the article of the code of the 28th of March, 1771, on the same subject.

"Conformément à certain ordre du Roi et du Conseil, daté le douzième jour de juin, 1635, entériné aux Rolles de la Cour Royale le vingt-quatrième jour de Septembre en suivant; et à certaine lettre des Seigneurs du Conseil de sa Majesté, datée le vingtième jour de Février, mil six-cent soixante, entérinée le vingt-septième avril mil six-cent soixante-cinq:—

"Il est ordonné qu' aucun habitant de cette isle, soit tavernier ou autre, ne recevra aucun étranger dans sa maison, ni ne permettra à aucun d'y rester plus d'une nuit, sans en avertir le connétable de la paroisse, à peine de dix livres d'amende, tiers au Roi, tiers aux pauvres, et tiers au délateur.

"Le connétable de la paroisse de St. Hélier sera sujet de faire rapport à M. le Gouverneur, dans vingt-quatre heures, de la connoissance qui lui aura été donnée de l'arrivée des étrangers, ou aussitôt qu'il lui sera possible; et les connétables des autres paroisses dans huit jours pour le plus tard, ou aussi-tôt que possible; si tels étrangers étoient suspects. Les étrangers ne seront point soufferts à demeurer en cette isle, ni à épouser des femmes du pays, sans la permission de M. le Gouverneur, selon qu'il est dirigé par le dit ordre de sa Majesté et de son Conseil, du douzième Juin, 1635; et s'ils contreviennent, ils seront contraints de vider le pays."

65. Mr. *De Ste. Croix*. There is also a record of the 13th of April, 1699 (*producing the same*). It varies from the other, inasmuch as the proceedings, with the exception of the grande enquête, are held at the extraordinary Court.

(*The same is read as follows.*)

"A la Cour Royale de l'île de Jersey, l'an mille six-cent nonante-neuf, le treizième jour d'Avril, Rachel de Queteville, femme de Jean le Maistre, accusée d'avoir pris et volé des gerbes chez M^e Geo. Poindestre, et trouvée saisie du blead ꝑvenu des d^tes gerbes, ꝑ le cons^le et off^rs de S^t. Sauveur, est envoyée prisonnière jusq^e à autre ordre, inst^ce des off^rs du Roy. L'an mille six-cent nonante-neuf, le quinzième jour d'Avril, Rachel de Queteville, cejourd'huy produite en Cour, est renvoyée de-rechef prisonnière jusq^e à autre ordre; et permis aux off^rs du Roy d'informer.

"L'an mille six-cent nonante-neuf, le vingt-deuxième jour d'Avril.

Mr. Pierre Anthoine.
Mr. Edo. Falle.
Mr. Jean Mourant.
Mr. Edo. Millays.
Mr. Jean Poindestre.
Mr. Jean Le Geyt.
Mr. Gédéon Gavey.
Mr. Jean Amy.
Mr. Jean Le Maistre, fils Jean.
Mr. Jean Le Maistre, fils Noé.
Mr. Ph. Falle.
Mr. Aron Falle.
Mr. Edo. Le Tublin.

Convenus à l'instance du Proc^r du Roy, po^r passer par voye d'enditement à la charge ou descharge du crime de larçin, dont Rachel de Queteville est accusée, ont déclaré croire en leurs consciences qu'elle est coupable du dit crime, c'est pourquoy elle est de-rechef envoyée prisonnière jusq^e à la Cour de Cattel.

"L'an mille six-cent nonante-neuf, le premier jour de Juin.

Jean De Carteret, g^r.
Mr. Edouard Esthur.
Mr. Laurens Machon.
Mr. Laurens Ahier.
Edouard Perchard.
Phile Le Maistre.

JERSEY.

Mr. F. Godfray, Greffier, and Mr. C. De Ste. Croix.

4 September, 1846.

Phile Le Breton.
Mr. Jean Maret.
Mr. Clem$^{t}$. Machon.
Mr. Ph. Collas.
Mr. Nov. Nicolle.
Mr. Tho. Syvret.
Clement Le Febvre.
Abr. Horman.
Michel Le Bastard.
Thomas Aubin.
Mr. Charles Helgrove.
Mr. Michel Du Pré.
Mr. Phile. Patriarche.
Mr. Jos. Le Prevost.
Mr. François Le Sueur.
Mr. Henry Nicolle.
Mr. Daniel Le Prevu.

Ces vingt quatre hommes ayant été convenus en qualité d'hommes d'enquête, à la charge ou descharge du crime de larçin, dont Rachel De Queteville serait accusée, ont déclaré croire en leurs consciences qu'elle n'est coupable du d$^{t}$ crime; c'est pourquoy elle demeure libérée de prison.

66. There appears a considerable difference between this entry and those of the present day, particularly in reference to the enditement?—There is a considerable difference.

67. This entry does not contain the act of the prisoner demanding the grande enquête?—No; it does not. It is very summary indeed; and so is the act of the grande enquête.

68. All this is antecedent to the form of "plutôt coupable qu' innocent?"—Yes.

69. What is the form of registering Orders in Council?—Orders in Council are found registered in three different books; namely, in the records of the States, in those of the Cour de Cattel, and in those of the Cour d'Héritage (the two ordinary Courts). The reason of those orders being found registered in the books of the States and of those two Courts I conjecture to be this: that, after their arrival, they were presented on the earliest day of the assembling of one of those bodies: either the States, the Cour d'Héritage or the Cour de Cattel registered, and ordered to be published in order to give them the earliest possible force. One registration was sufficient: and that registration contained the order for publication which gave them their sanction. The inconvenience of that proceeding has been found subsequently; and we have now a book specially devoted to the registration of Orders in Council.

70. Is the registration an Act of the States now?—No. Orders in Council are almost always addressed to the Bailiffs and Jurats, so that the registration is ordered by that Court. The Order in Council must be registered by the Court, in order to be published, before it has the force of law. It does not operate *ipso jure*.

71. Has there not been a recent decision of the Privy Council, that even without registration such an Order becomes law?—Not an Order of Council.

72. Mr. *Godfray*. I believe there has been something of the kind: but I think such an Order never could be enforced here unless it had been registered.

73. Mr. *De Ste. Croix*. This (*producing the same*) is the book in which Orders in Council are now registered. In civil cases the register is at the suit of the party wishing to have the Order registered. He actions the other party to appear before the Court, in order that the Order in Council may be registered. A general Order in Council is produced generally by the Attorney General, and read by him.

[*The following form of entry of an Order in Council confirming an Act of the States is read.*

"Avril 15. L'an mil huit-cent trente-neuf, le quinzième jour d'Avril.

Par devant Messire Jean de Veulle, Chevalier, Bailli de l'Ile de Jersey, assisté de Nicolas le Quesne, and Philippe Le Maistre, écuiers, jurés.

Le Procureur Général de la Reine ayant donné lecture à la Cour d'un Ordre de Sa Très Excellente Majesté en Conseil, en date du 10$^{e}$ du courant, qui confirme certain Acte relatif à la pêche des huîtres, passé par les Etats, le 14$^{e}$ jour de mars dernier, la Cour, conformément aux conclusions du dit Sieur Procureur Général de la Reine, a ordonné que tant le dit ordre que le dit Acte des Etats seront enregistrés dans le livre destiné à l'enrôlement des ordres de Sa Majesté en Conseil, à fin de tirer leur plein et entier effet, selon leur teneur.

Du quel Ordre de Sa Très Excellente Majesté en Conseil et du quel Acte des Etats la teneur suit."

[*The following form of registration of an Act of Parliament by Order of Her Majesty in Council, is read.*]

"Mai 31. L'an mil huit-cent trente-neuf, le trente-unième jour de Mai.

Par devant Messire Jean de Veulle, Chevalier, Bailli de l'Ile de Jersey, assisté de Philippe le Maistre et Edouard Nicolle, écuiers, jurés.

Le Procureur Général de la Reine a donné lecture à la Cour d'un ordre de Sa Très Excellente Majesté en Conseil, en date du 22$^{e}$ jour de Mai, 1839, qui ordonne l'enregistrement et la publication de certain Acte passé la présente Session du Parlement, intitulé,

"An Act for punishing mutiny and desertion, and for the better payment of the army and their quarters."

La Cour a ordonné que le dit ordre et le dit Acte de Parlement demeuront logés au greffe, pour faire partie des records de cette île, et qu'ils seront publiés au lieu ordinaire, à fin que personne n'en prétende cause d'ignorance."

[*The Witnesses withdrew.*]

Adjourned.

*Monday, 7th September*, 1846.

*Thomas Le Breton*, Esq., (Procureur Général) examined.

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74. The gentlemen of the bar who have favoured the Commissioners with the answers to their queries state, as might be expected, in answer to the first question, that they have acquired their experience by practising at the bar. Do you happen to know, as matter of custom, whether the gentlemen who practise at this bar usually educate themselves at the English bar, or at the French bar, or exclusively here?—Never exclusively here: both in France and in England. In France, of course, to obtain fluency in the French language, which they cannot obtain either in England or in this country.

75. Is it generally in both places, or only in one?—Generally in both.

76. Have any of the gentlemen practising here been called to the English bar?—Mr. Godfray has.

77. (To Mr. *Godfray.*) Did you practise in England at all?—No.

78. (To Mr. *Le Breton.*) Is the ordinary course of study for the gentlemen of the bar to make themselves familiar with the foreign systems of law?—There is no regular course of study at all. It is left entirely to the gentleman's own ideas of what is the best course to adopt.

79. If you had a nephew or son whom you proposed to bring up to this bar, what advice should you give him as to his course of study?—I should give him the advice, after he had finished his education, to make himself acquainted both with French and English law.

80. After he had finished his school and collegiate education?—Yes; or even without a collegiate education.

81. Do you know at all, historically, in what the limitation of the number of the bar originated?—No: it has always been so limited; but when the limitation began I am not aware. That might be ascertained, perhaps, by making some researches.

82. (To Sir *John De Veulle.*) Do you know?—No.

83. (To Mr. *Le Breton.*) They are entirely selected by the bailiff, I believe?—Yes, entirely.

84. Will you give the Commissioners the names of the gentlemen who constitute the present bar?—Mr. Hammond is the oldest, I think; Mr. Le Couteur, the next; Mr. Francis Godfray, the next; Mr. Peter Le Sueur, the next; Mr. James Godfray, fifth; and Mr. Robert Pipon Marett, the sixth.

85. Have all those gentlemen pursued the course you were speaking of?—I am not aware. I could not answer for all of them.

86. The Attorney and Solicitor General, I suppose, are considered to be members of the bar?—They are.

87. Speaking of all those gentlemen, you would probably say that not having studied at either the French or the English bar is a case of exception?—I should think so.

88. The Attorney General is the Procureur, and the Solicitor General the Avocat, de la Reine?—Yes.

89. Has there been any custom for the gentlemen of the bar to practise in any department of the law here? For instance, as écrivain or greffier?—An avocat may do the business of écrivain also of right.

90. Are they selected in any instance from the écrivains?—Not particularly so. I am not aware of any instances.

91. Sir *John De Veulle.* None of the present bar are so, I think.

92. Mr. *Hammond.* The appointment would depend upon the bailiff, and is quite irrespective of their previous occupation.

93. Mr. *Evans.* There is nothing to prevent any person not brought up to the law practising. The écrivain takes proceedings as an attorney would. The only distinction is, that an écrivain can pass contracts, as it is called, which a person not brought up to the law cannot do.

94. Is the number of écrivains limited?—No.

95. (To Mr. *Le Breton.*) With respect to the gentlemen who sit as judges, the Jurats, do they make a point of going through any legal education previously to their election as Jurats?—No.

96. They have, in point of fact, political functions of considerable importance to discharge, have not they?—Yes; they act as judges in Court, and as members of the States; they have political as well as judicial functions.

97. Have not some of the gentlemen who are Jurats had opportunities of becoming conversant with the law? Mr. Le Gallais, for instance?—He was deputy vicomte for a great number of years, and in large practice as an attorney.

98. By attorney do you mean écrivain?—Yes; Mr. Marett was, a long time, member of the bar; he was so when he was elected a Jurat.

99. Will you be good enough to mention the names of the present Jurats?—Mr. Phillip Marett, Mr. Phillip Le Maistre, Mr. Edward Léonard Bisson, Mr. Phillip De Sainte Croix, Mr. Edward Nicolle, Mr. Phillipe Winter Nicolle, Mr. Charles Bertram, Mr. John Le Couteur, Mr. Phillipe Picot, Mr. John Pelgué, Mr. Phillipe Le Gallais, Mr. Francis Arthur.

100. (To Mr. *Marett.*) You were a member of the Bar, we understand, before you filled the office of Jurat?—Yes: I was at the bar.

101. As Mr. Le Maistre is not present, perhaps some gentleman may know what was his occupation previous to his becoming a Jurat?

102. Mr. *Le Breton.* He was a country gentleman, I believe.

103. *Vicomte.* I think he had been constable and centenier.

104. Mr. *Godfray* (Advocate). He had been nine years constable.

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105. (To Mr. *Bisson.*) Had you had any opportunity of acquiring a knowledge of law, previously to your filling the office of Jurat?—I had no occupation whatever before I was Jurat.

106. Mr. *Edward Nicolle.* Mr. Bisson had been for some time at Caen.

107. (To Mr. *Bisson.*) Did you fill any parochial office previously to your becoming a Jurat?—I was elected a constable; but I was not sworn in.

108. (To Mr. *Phillipe De Sainte Croix.*) Had you given any attention to the profession of the law before you were a Jurat?—No: I was a merchant before I was elected a Jurat.

109. Had you acted as constable?—No: not at all.

110. Do you still continue a merchant?—Yes.

111. Had you served any of the parochial offices?—I had been twice elected constable of St. Héliers: for six years I exercised that office.

112. (To Mr. *Edward Nicolle.*) Did you give any attention to the study of the law before you were a Jurat?—No: a good deal to justice, as far as I could; but very little to law.

113. (To Mr. *Phillip Nicolle.*) Had you given any attention to the study of the law before you were a Jurat?—I am a merchant by profession. I have been in the office of police officer and centenier. I was twice elected centenier, and served three years: the last time, I declined serving.

114. Three years is the amount of your service?—Yes.

115. Were you constable also?—No: I had not been constable before I was elected a Jurat.

116. (To Mr. *Charles Bertram.*) Had you given any attention to the study of the law before you were elected Jurat?—I had been three years centenier, and three years constable of Grouville parish.

117. Had you any opportunity of studying the law, or knowing the practice of it, except in those offices?—No.

118. You are a proprietor?—Yes.

119. You do not carry on any trade?—No: I never did.

120. By proprietor you mean a landowner?—Yes.

121. (To Mr. *John Le Couteur.*) Will you have the goodness to answer the same question?—I have served the office of constable of St. Mary's.

122. Had you had any opportunities for any previous study of the law before you became Jurat?—No.

123. Nor subsequently?—No.

124. Are you in business?—No: I am a proprietor.

125. (To Mr. *Phillip Picot.*) Will you be kind enough to answer the same question?—I have stated, in answer to the first series of questions, that I had served the offices of centenier and constable of Saint John's parish.

126. Are you in trade?—No: I am a holder of land.

127. (To Mr. *John Pelgué.*) Will you be kind enough to answer the same question?—I had been two years in a denunciateur's office. Previously to that, I had been constable, and had become acquainted with the criminal law in that way, I was oftentimes called upon to perform the duty of a member of the "enditement."

128. You are a landed proprietor, I believe?—Yes; I am a landed proprietor.

129. (To Mr. *Le Gallais.*) Will you be kind enough to answer the same question?—I had been twenty five years in practice as an écrivain. I also held the office of deputy vicomte.

130. (To Mr. *Francis Arthur.*) Will you answer the same question?—I served the parish of St. Ouen for nine years as chief of Police.

131. I believe you are a landed proprietor also?—Yes: I am.

131. (To Sir *John De Veulle.*) Prior to the Constitutions of King John, is there any evidence of the existence of the office of Bailiff?—Yes: I believe there is.

132. It would appear that the effect of the Constitutions of King John, if those were really the origin of the twelve jurats, was to abridge the power of the Bailiff?—Yes; because that officer then held the two swords.

133. Can you say whether there was any officer in the old Norman law answering to the jurat, as forming part of the body of the Court?—I am not aware of there being any.

134. Mr. *Edward Nicolle.* I should say it was the seigneur, who administered justice, assisted by his franc tenants.

135. Can you give any passage confirmatory of that opinion?

136. *Vicomte.* I should think there was such a passage in Rouillé. It shall be looked out by a future day. I consider that the seigneur sat, and, with the assistance of his franc tenants, adjusted all difficulties.

137. As subordinate to the Bailiff?—Yes; I should say so. At that time we had prevôts, who are now sunk into very subordinate officers; but they were then very important officers.

138. Is there any qualification for the office of Jurat except the being elected?

139. Mr. *Evans.* There is a qualification that they must have 30*l.* a year; and they cannot carry on the trade of brewer, baker, butcher or tavern keeper.

140. Is that 30*l.* a year proceeding from land?—Yes: 40 quarters of wheat rent, which is equivalent to about 30*l.* 15*s.* 3*d.* in money now. It was much higher formerly. The value of a quarter is 15*s.* 3*d.* British, and 16*s.* 8*d.* Jersey.

141. They take an oath of office, of course?—Mr. *Le Breton.* Yes: the following is the oath of office, as it is set forth in the code of 1771. (*The same was read.**)

142. There is no religious qualification, is there?—No.

* See the oath set out at p. 78.

143. Mr. *Nicolle.* There was formerly, previously to abolishing of the Test and Corporation Acts: but there is none now.

144. Mr. *Evans.* The oath of allegiance and the oath of supremacy were required to be taken formerly. Since the repeal of the Test and Corporation Act, the Declaration which is contained in the Act of Parliament has been substituted for it.

145. Mr. *Le Breton.* An oath of office is taken still. The following declaration is made, that they will not use the power of their office to endanger the Church of England.

"Je, A. B., certifie et déclare, solemnellement et sincèrement, en la présence de Dieu, sur la vraie foi d'un Chrétien, que jamais je n'exercerai aucun pouvoir, autorité ou influence, que j'ai ou que je pourrai avoir en vertu de la charge de , pour ébranler ou affoiblir L'Eglise Protestante, telle qu'elle est établie par la loi en Angleterre, ou pour troubler la dite Eglise, ou le clergé de la dite Eglise, dans la possession de tous les droits ou priviléges auxquels la dite Eglise, ou les dits Evêques, et le dit clergé, ont ou pourront avoir droit par la loi."

146. Before the repeal of the Test and Corporation Acts, they took the oath of supremacy?—No: I believe they only took the oath of office; but the above declaration has been added since the repeal of the Test and Corporation Acts, and is required to be made within six months of their taking office.

147. Mr. *Evans.* I believe the truth to be this. The Acts of Parliament were transmitted here to be registered; the islands not being named in them, the States adopted an Act of their body, which was confirmed by an Order of Her Majesty in Council, requiring a declaration of the same description as that contained in the Act of Parliament.

148. (To Mr. *Le Breton.*) Do you remember any recent instance of the exception mentioned in the 5th Article of the Constitutions of King John taking place: "Exceptis casibus nimis arduis, et si quis legitimé convictus fuerit a fidelitate Domini regis tanquam proditor recessisse?" What is the meaning of that?—Proditor, as I understand it, refers to the concealing a theft, or to misprision of treason. No case has happened, within my knowledge, of any person being taken up and not tried here under that article.

149. I suppose the phrase "exceptis casibus nimis arduis" refers to cases of treason, also to cases of dispute arising between members of the States, or members of the Court and the Governor?—That is the interpretation which has been generally given to that clause.

150. Do you remember any instance of the Court putting a construction upon it?—There is one instance of a man of the name of Milais, in 1781. The following is the Order in Council with respect to it:—"At the Court of St. James's, the 15th of June, 1781, Present, the King's Most Excellent Majesty, Lord President, Earl of Hillsborough, Earl of Clarendon, Earl Nugent, George Germain, Viscount Townshend, Viscount Stormont, Lord Amherst.

Whereas there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the affairs of Jersey and Guernsey, dated the 12th of this instant, upon considering the case of Mr. Edward Milais of the Island of Jersey, confined on suspicion of a treasonable correspondence some time since, but now enlarged upon bail: His Majesty, having taken the same into his Royal consideration, is pleased, with the advice of the Privy Council, to order, as is hereby ordered, that the Right Honourable Gentleman Conway, Governor of His Majesty's said Island of Jersey, do forthwith appoint such persons as he shall judge proper to take informations upon oath touching the matter with which the said Edward Milais stands charged (which oath the persons who shall be so appointed are hereby authorized and empowered to administer); and that the said Governor do cause all such informations, properly authenticated, to be transmitted to the Right Honourable the Earl of Hillsborough, one of His Majesty's principal Secretaries of State, in order to be laid before His Majesty in Council for the further signification of His Majesty's pleasure thereupon. Whereof the Governor of his said Island of Jersey for the time being, and all others whom it may concern, are to take notice, and govern themselves accordingly."

151. Mr. *Dupré.* After the attack of the French there was a person taken up on suspicion; the case was inquired into by the Governor and the jurats; he was sent up to London; and no trial in consequence took place.

152. (To *le Greffier.*) I suppose there would be a record of that?—I believe there is.

153. Mr. *Dupré.* I believe there is a case of a man of the name of Junot, in the 16th century.

154. Was it a case of treason?—Yes. The case was not proceeded with.

155. Mr. *Marett.* There is a reference, in the printed statement of Hemery and Dumaresq, to a case in which a person was kept in prison for a considerable time without any redress; and it was thought a case of very great hardship.

156. (To Sir *John De Veulle.*) It appears that most of the Jurats have filled the office of constable or centenier, or some other parish office; is it necessary that a person should have filled some or one of those offices in order to be Jurat?—I believe not.

157. (To Mr. *Le Gallais.*) You have stated that you were écrivain before you became Jurat; I make no doubt you ceased to practise as écrivain after you became Jurat?—Yes. I held the office of écrivain and Deputy Vicomte at the same time.

158. Is there any law to prevent a person from acting at the same time as écrivain and Jurat?—I believe there is; it is never done.

159. (To Mr. *Dupré.*) Do those six gentlemen, who are admitted to practise as barristers, in point of fact, all practise? Do they all attend the Courts?—Not all of them.

160. How many of them do not?—Two do not regularly practise.

161. There is some formal obligation, is not there, to attend regularly?—Yes.

162. Where is that regulation to be found?—It is to be found in the oath administered to advocates, every six months, at the sitting of the Cour d'Héritage.

163. Mr. *Francis Godfray,* (Avocat.) There is no obligation on an advocate to attend,

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unless he has causes, except at the Cour d'Héritage. If he fail to attend the Cour d'Héritage four terms, which would occupy two years, he would lose his place, in the absence of a sufficient excuse.

164. As to the Criminal Court there is no obligation to attend, is there?—Not unless he has a cause.

165. Supposing the six counsel happened all to be away, except Her Majesty's officers, does the Court lose the means of assigning counsel to a prisoner?—Then the advocate would be told that he was appointed, and he would act for the prisoner.

166. Supposing he were in London, or in Paris?—If he is absent from the island he cannot attend, of course.

167. Mr. *Marett.* The practice has been, when a prisoner did not wish to have either of the advocates who happened to be present, for the Bailiff to summon them all, and to allow the prisoner to choose the advocate he thinks proper.

168. (To Mr. *Le Breton.*) Will you point out any passage in the Code which forbids a Jurat acting as écrivain?—The following passage, in page 163, appears to me virtually to do so:—" Les Jurés ne plaideront, ni ne donneront point conseil, en aucunes autres causes que celles où ils seront intéressés; celui d'entre eux qui entreprendra de le faire sera privé de sa voix dans l'affaire dépendante; cependant, lorsqu'un Juge ne sera point satisfait sur quelque point de la contestation, et qu'il désirera d'être mieux informé, afin de donner une saine opinion, le Chef Magistrat y fera pourvoir."

169. Mr. *Marett.* It appears to me that that practically forbids their practising; because, as all the Judges serve in turn, at all causes indiscriminately, they cannot tell when any one of them may be called on to act.

170. Mr. *Evans.* There is another part of the Code which says that a Jurat shall not be procureur or attorney.

171. Mr. *Godfray,* (Greffier.) It is not in the Code; it is in the Regulations of the Commissioners of 1562. " Item, que les Jurés, ne aucun d'Iceux, ne le Vicomte, ne le Dénontiateurs, ne le Greffier de la Cour, dorénavant ne seront receus à estre meneurs, procureurs, ou attournés d'aucun, ne de plaider en Cour pour aucun, quel qu'il soit, fors po$^{r}$ leurs pŕs cães, mais soy comporteront indifférent selon le devoir de leurs offices, entendu, toutefois et quantes, si aucun son Testament ou dernière volonté comet et établit, ou choisit l'un des dits jurez, ou le Vicomte, Dénontiateurs, ou le Greffier, ou aucun autre, pour estre meneur ou tuteur des enfans du dit décédé, qu'adonc celui qui par le dit décédé sera ainsy choisy et nomé pourra estre meneur ou tuteur des enfans du dit décédé sans préjudicier ne enfreindre c'este présente ordonance non plus et quantes si elle n'avoit oncques esté faite."

172. Mr. *Evans.* The question was decided at the Privy Council upon that very order; and Lord Lyndhurst, who was presiding at the time, adopted the law as laid down there.

173. Mr. *Le Breton.* The following is the law relating to the bailly's power over the Jurats and other officers of the Court:—Les Jurés, et les autres officiers de la Cour, doivent accompagner le Bailly, ou son Lieutenant, de son appartement au siége de Justice, et lui porter respect comme à celui qui représente la personne de Sa Majestie, et qui est son premier ministre dans ce lieu là; et, en particulier, lorsqu'il est en Cour, ou executant le devoir de sa charge; le délinquant doit être suspendu, si c'est un juge ou autre officier, et tous autres seront punis par emprisonnement, jusqu' à ce qu'ils aient réparé leur faute, en demandant pardon, et satisfait à la peine pécuniare qui leur aura été imposée, selon la nature de l'offense."

174. Mr. *Dupré.* It has frequently occurred that a prisoner was not satisfied with the advocate assigned to him; or it has happened that the advocate he had selected was not present. In that case, the Bailiff has generally summoned either all the advocates, or that particular advocate.

175. Sir *John de Veulle.* I recollect a case where the defendant could not find an advocate. I summoned all the advocates, that he might have a choice of one.

176. Mr. *Le Breton.* Those were not criminal cases, but civil cases.

177. (To Sir *John de Veulle.*) Have you the power of dismissing?—No.

178. Mr. *Marett.* It is a power of fine and imprisonment.

179. Mr. *Evans.* That is *vexata quæstio.* The Advocates will say no; the Court will say yes.

180. *Vicomte.* The Bailiff may suspend: there is an order of council to that effect.

181. Mr. *Le Breton.* The following is a passage from the code of 1771, showing the power which the bailiff possesses over the Advocates.

" Les parties, ni leurs avocats, ne s'interrompront point en plaidant; mais le demandeur établira ses raisons, le silence étant gardé par la partie adverse; après quoi, celle-ci fera sa réponse, observant le même ordre: et de cette manière procéderont par voie de réplique ou duplique, si tant est que l'affaire le requierre: et quiconque transgressera cette régle, si c'est un avocat, sera puni par amende, à la délibération de justice, laquelle n'excédera point trois livres tournois pour la première offense, et sera interdit pour un mois pour la seconde, et pour toujours en cas d'autre récidive: et, si c'est un particulier, on lui infligera une amende qui n'excédera point trois livres."

183. (To Sir *John de Veulle.*) Jurats occasionally act for each other, I suppose?—Yes; they are bound, if they cannot be present themselves, to request another Jurat to sit in their stead.

184. Supposing there were an instance in which a Jurat practised as écrivain, and his cause came on, he would not be subject to that particular law if another gentleman sat for him?—In point of practice there is nothing of that kind occurs.

185. (To Mr. *F. Godfray,* Advocate.) You say, if the avocat fails to attend the Cour d'Héritage, and to renew his oath, he cannot plead during the term unless he gives sufficient

excuse for his absence. If he continues absent for a certain time, does he lose the privilege of pleading altogether?—There is no example of it. I suppose it would take place.

186. Mr. *Marett.* If an advocate omits to appear at the Cour d'Héritage during four successive terms, he is liable to lose his place. Strictly speaking, an advocate who omits to renew his oath regularly can be prevented pleading during that term till he has renewed his oath. The Bailiff would have the privilege of reappointing him. The following is the oath taken by the advocate.

"Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous exercerez l'état et charge d'Avocat en la Cour Royale de notre souverain Seigneur le Roi . . . . par la Grâce de Dieu, Roi de la Grande Bretagne, &c., en cette son Isle de Jersey, la Majesté duquel vous reconnoissez sous Dieu, suprême Gouverneur en tous ses Royaumes, Provinces, et Dominions, quittant, et renonçant à toutes autres superiorités foraines et étrangères; vous garderez le droit de sa Majesté et de ses sujets, et soutiendrez l'honneur et gloire de Dieu et de son Eglise. Vous défendrez et maintiendrez les priviléges, franchises, coutumes et libertés de l'isle, vous opposant à quiconque les voudrait enfreindre. Vous n'entreprendrez ni ne soutiendrez, soit en demandant ou défendant, aucune cause qui vous paraîtra dénuée de tout droit, ou intentée ou soutenue par méchanceté. Vous ne controuverez aucuns faits, si vos cliens ne vous les ont affirmés pour vrais. Vous ne proposerez ni alléguerez aucun fait, coutume ni usage, que vous saurez être contraires à droit et justice; et si aucune chose touche le droit de sa Majesté, vous en informerez la Cour, et le maintiendrez. Vous ne ferez aucun marché ni contrat avec vos cliens, d'aucune cause en litige ou contentieuse, ni de partie d'icelle. Vous vous contenterez de gages et salaires raisonnables, et assisterez aux veuves, pauvres, orphelins, et personnes indéfendues. Et finalement en vos conclusions, vous vous conformerez selon le bon avis de Monsieur le Bailly, ou de Monsieur son Lieutenant, et de Messieurs de Justice, assistant aux Cours, selon le devoir de votre charge."

187. It would amount to a cession of his place: the Bailiff could fill up his place?—Yes.

188. (To Sir *John de Veulle.*) Do you assent to that?—Yes.

[*The Witness withdrew.*]

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*John Hammond,* Esq., examined.



189. The gentlemen who have answered the queries of the Commissioners state that among the authorities there are the precedents of the Court. In what shape are the precedents accessible?—They are in the Court Rolls, and in the custody of the clerk of the Court, or greffier; and in all criminal cases, where an advocate charged with the defence of a prisoner wishes to refer to those, he applies at the office of the clerk of the Court, and has an inspection of the books.

190. How does he know how to search?—By his own industry, nothing more; we have no printed reports.

191. And no digest?—None.

192. I suppose some of the gentlemen who are here keep notes?—Yes; but they are principally in civil cases. I am not aware, as to criminal precedents, that they are to be found anywhere else than in the Court Rolls.

193. There would be some points of evidence which would be frequently recurring?—All defence in criminal causes is gratuitous. Of course, therefore, the advocate has the inspection of those Court Rolls gratuitously. But, when the prisoner is in circumstances of being able to defray the expense, I conceive it follows the ordinary rule, that is of paying for the precedents which may be obtained, or for the services of the advocate, as the case may be.

194. In cases where the French and English law were at variance, supposing no precedent in the Jersey law, and no definite article in any part of the codes, what is it which induces an advocate to choose to which he shall resort?—I can only judge from my own mode of proceeding, that, where I find any principle of law analogous and favourable to the arguments I have to put forward, in one or the other (I am speaking of the Norman law and of the English), I would bring it forward as a principle of law; not quoting it as the law which necessarily guides us, but as a principle whence our own law would be deducible. The Attorney General, in all probability, would have his authorities.

195. (To Mr. *Arthur,* Jurat.) In the French Code Pénale it is laid down that an attempt to commit a crime accompanied with an inception of the Act, and only stopped by something with which the prisoner has nothing to do, is tantamount to committing the crime itself: the English law makes it a much less offence than the crime, and turns it from a felony into a misdemeanour. Which of those would be preferred? The advocate, Mr. Hammond, says he would prefer which ever suited him.—I think the English law.

196. As being milder, or from a general preference to the English law?—I think the English law would be preferred.

197. (To Sir *John de Veulle.*) By the French law, the punishment of beheading attaches to certain crimes: there is nothing of that sort here?—Of course not.

198. Is there anything like restitution in criminal cases?—I think the Code Napoleon is never quoted; certainly not once in one hundred times.

199. (To Mr. *Hammond.*) The code of 1771, I suppose, is undoubted and peremptory law now, except where it has been since altered?—Yes. A good many of its provisions have been abrogated; but we find very little there to assist us in criminal proceedings.

200. Is there anything in the code of 1771 relative to Criminal Law?—There is one particular part, as to accomplices. "Conformément à l'Ordre du Conseil de 1635, le 12e juin, ceux qui seront accessoires en crimes de meurtres, ou qui en félonie, après le crime commis, recevront ou favoriseront les coupables avant leur conviction, ou qui emporteront ou favoriseront

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l'évasion des coupables hors de l'isle, après que proclamation aura été faite de les appréhender, et ceux qui briseront la prison, ou assisteront tels délinquants, seront punis par amende et emprisonnement."

201. With that exception, is there any criminal enactment in the code of 1771?—I am not aware of any: I do not think there is any whatever. There is a kind of police regulation as to the paving of the streets.

202. At the time of the code of 1771, the criminal law would consist of its enactments and the common law?—Yes; that would be all.

203. Subsequently to 1771, the laws would be the laws of the States, confirmed by Orders in Council; Acts of Parliament in which the island is named; and Acts of Parliament registered in compliance with an Order in Council; those would be the subsequent laws?—If the islands were not named in the Act of Parliament, the more usual mode is to make the local law in harmony with the provisions of the Act of Parliament, getting that law confirmed by the Council: it then becomes a local Act.

204. That would be an Act of the States confirmed by the Council?—Yes, the initiative being in some measure taken by the States on those occasions.

205. Has the law of the island followed the changes in the English law to any extent, with reference to the criminal law?—Not by any enactments.

206. Breaking open a house, for instance, at twelve o'clock at night, with intent to steal. We used to hang for that; now we do not, unless under particular circumstances. How is that here?—There is no doubt that, as to the punishment for such a crime, it was death; and that has been put into execution. But subsequently the punishment would not be death, but in all probability transportation, perhaps also depending much upon the particular circumstances of the case. But we have no law enacting that in so many words. The practice has changed with regard to the punishments without any definite law making those changes.

207. That is a difficulty we feel about this law. It would appear, from the answer given just now, that there is a recognised common law antecedent to any code. That common law must be common law to this moment, unless some code has changed it. I understand you to say it has been changed without any statutory alteration?—The administration of it has been changed. The definition of the crime is the same; but the mode of punishing it is changed. The last case in which a person suffered death for burglary was about forty or fifty years ago, We have had many convictions for it since.

208. Is it now legal in Jersey to hang for burglary?—The punishment is death, according to the common law.

209. Is it legal?—I should think that that might be the punishment, certainly.

210. (To Sir *John de Veulle.*) Is that your view of the law? Can the law not formally abrogated cease to be law?—No: it does not cease to be law.

211. Mr. *Hammond.* The pillory was a very common punishment here, and scourging. It has been practised since I was at the bar, on many occasions, for forgery, robbery, larceny, and also burglary. In later years there has been no such punishment. The generally substituted punishment has been transportation for a period of years. We have no definite law stating that for such a crime such punishment should be awarded; but a change has taken place in the adjudication of punishment by a kind of consensus on the part of the authorities, without any written law to guide it.

212. What makes transportation on conviction for burglary legal? What is to prevent a man bringing a writ of error, on an action for false imprisonment in such a case?

213. Sir *John de Veulle.* The Act of Court is confirmed by an Order in Council.

214. Mr. *Francis Godfray,* (Advocate.) When the first person was transported, it was said it was quite illegal; but the Court transported the man; and Her Majesty, not in Council, but the Secretary of State, I think, stated that this man would be sent to Botany Bay.

215. Mr. *Philip Nicolle.* There was an Order in Council allowing us to transport.

216. Sir *John de Veulle.* The punishment of transportation is of very modern origin: and, in every case when a man has been transported, that I am aware of, the Court sends up the Act to the Privy Council, and the Privy Council makes an Order in Council ordering the transportation.

217. If that were so, the effect would be that an illegal sentence would be made legal by an *ex post facto* law.

218. Mr. *Hammond.* In the strict sense, that is the technical way in which one would view it.

219. Mr. *Francis Godfray,* (Advocate.) The Court has no power to transport a person to a specific place. They may banish him. The Court has done it: but it has been confirmed by the Council.

220. In England we have no power to transport except by Act of Parliament.—No: it was so stated to the Court the last time they did it; but it was overruled.

221. Sir *John de Veulle.* I am told that there is an English Act of Parliament giving us power; but I never saw it.

222. Mr. *Hammond.* There is no register of such an Act of Parliament that I am aware of.

223. Mr. *Francis Godfray,* (Advocate.) The Order that comes before the removal of the prisoner is only to state the place where the prisoner is to be taken. It is not to be supposed that the Order in Council comes to confirm the judgment of the Court. The Court have no power to transport the prisoner. As for an Act of Parliament authorizing the Court of Jersey to do so, there is no such Act.

224. (To Mr. *Hammond.*) In cases of rape, for instance, what would be the punishment?—I consider that by our common law the punishment is death.

225. Has that ever been altered?—Not by any legal enactment.

226. Therefore the punishment which is inflicted for that would be subject to the same remarks as have been made as to burglary?—I conceive it would be so. I do not know a case where there has been a conviction for rape of late. There have been some accusations; but they have not been found, I think. The last, I think, was found merely as an assault.

227. Colonel Le Couteur states, in his answers, that there is an Order in Council making the crime of an unnatural offence punishable by death?—That is in 1799.

228. *Vicomte.* The following is the Order in Council to which I referred.

"Aux Etats de l'île de Jersey; l'an mil sept-cent nonant-neuf, le dix-huitième jour d'Octobre. D'autant qu'il s'est élevé des doutes touchant le genre de punition qui doit être infligé sur le crime de sodomie, et paroissant que les lois du pays ne sont pas suffisamment claires et précises sur ce sujet, les Etats ont jugé expédient d'établir pour loi permanente, moyennant la sanction de Sa Très Excellente Majesté en Conseil, Que quiconque se rendra coupable, après l'émanation et promulgation de ce présent acte, du crime abominable de sodomie ou de bestialité, et en sera dûment atteint et convaincu, selon les coûtumes et usages de cette île, sera puni de mort, et souffrira le même supplice, les mêmes confiscations et forfaitures de ses biens, que la loi inflige présentement sur ceux qui sont convaincus de quelque crime capital. Partant les Etats très humblement supplient Sa Très Excellente Majesté en Conseil d'accorder son Approbation Royale à la présente ordonnance, afin qu' elle ait force de loi dans cette île, et y soit à jamais observée comme telle."

229. With the exception of the instance of manslaughter and the instance of the punishment for an unnatural offence, have you any statute law in this island for the classification and punishment of offences?—None whatever.

230. Will the gentlemen of the bar be so good as to listen to the following paper which was forwarded to the Commissioners by the Vicomte? (*The same was read.**)

231. (To Mr. *Hammond.*) What is the general practice which the Privy Council appear to rely on. They say that, though there is nothing making it one of the highest offences, yet it is in itself highly criminal; and apparently it assumes that, whenever a thing is of a generally criminal nature, the Court may punish it in some way short of capital punishment?—On the principle, I suppose, that where there is a crime there must be a punishment. I think I could cite cases where there has been the punishment of death for burglary contemporaneous with 1771.

232. The paper which has just been read, though it disallows an *ex post facto* law, appears to recognise as existing in Jersey some general principle by which, when there is something in its nature offensive or criminal, the Court may apply a discretionary punishment short of capital punishment?—The practice which has obtained is quite in conformity with that view; for the punishments are not all alike.

233. It says that, though this is not a felony as it would be in England, it is a misdemeanor by the common law of Jersey, and a criminal act of which the Court may take cognizance?—I know that we have had two or three accusations laid by the Crown for entering a house at night, accompanied by the intent to commit felony.

234. Is there not a general principle running through the law of Jersey, that a thing which is found to be dangerous or wrong, or which interferes with the comfort of the subject, may be treated, though not capitally, yet upon general principles as something highly offensive and therefore punishable by the Court in any way short of capital punishment?—I should say, Yes. And I am inclined to answer in the affirmative, from the practice which has obtained.

235. Mr. *Evans.* At common law the Court have that power.

236. (To Mr. *Hammond.*) Is the forging of a bill of exchange a crime in Jersey?—Yes. It has been prosecuted and punished as such, as a forgery.

237. How is that punishable?—Formerly, in my practice, in general it was punished by the pillory, by scourging and banishment: there was also cutting off the lower part of the ear.

238. By what law is forging an acceptance of a bill of exchange made a crime?—By no other than the common law.

239. That is the law of Normandy?—Yes.

240. Mr. *F. Godfray,* (Advocate.) I think it would be better to refer the Commissioners to the report which was drawn up by Messrs. Pipon and Durell, at the request of the Privy Council, as to what was the criminal law of the island then. Otherwise it would appear that we had no criminal law before the year 1771; whereas we had the old Norman law. It would be of no use for us to quote all those to the Commissioners. It would be better to hand the book to the Commissioners.

241. (To Mr. *Hammond.*) Do you consider that the report made by Messrs. Pipon and Durell, who were the law officers of the Crown in 1790, is an authority binding upon the Court?—It is an authority which we, as advocates, constantly cite, and I believe the Crown officers also, in reference to the basis from which the definition of crimes is drawn, and the source whence those gentlemen gain those definitions. We consider it a high authority in that respect.

242. It is cited as an authority by the Court?—The then Attorney General was a man of great acumen, and took a great deal of trouble in it.

243. Mr. *Evans.* The Commissioners will understand that the common law was left precisely as it was subsequently to 1771. The code of 1771 does not affect the common law at all.

244. Here are two Orders in Council which were sent to us by the Vicomte. The first is of the 13th of March, 1689, and the other of the 30th of November, 1699. (*The same were read.*†) It should seem that it was supposed that by the common law there was no distinction as to homicide in this island?—I should not be inclined to acquiesce in that.

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* See pp. 66, 67. † See p. 65.

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245. You rather agree with the later representation than the earlier?—I consider there was a distinction from the earliest time.

246. Do you find that in the Coustumier?—Yes; and in Rouillé.

247. *Vicomte.* The following is an extract from an Order in Council of the 12th of June, 1635, a translation of which forms a paragraph in the Jersey code of laws of 1771, under the title of Loix *:—

"First, whereas there is noe punishment by the lawes and customes of that island for accessories in murder and felonies after the fact donne, vizt. for such as favoure and receave the principalls before theire conviction, it is thought fitt and ordered that such accessories shall be punished by ffyne and imprisonment; and for such also who convaye ffelons out of the island after proclamacon for their apprehension, and who breake prison, for the favourers of such offenders and compounders with them, that they be punished by ffyne and imprisonment."

248. There being only the common law to rely upon, and no statute law, the alteration in the state of affairs must have created a great many crimes which could not have existed previously. To criminal acts of that kind, have the Court the power of applying punishments?—I think the range is pretty wide.

249. For instance, obtaining money under false pretences, which would be a common fraud: what is the punishment for that?—That would be a fraud under aggravated circumstances. If there be embezzlement under those circumstances, we have nothing to define how it shall be denominated.

250. What would you charge in your indictment?—Simply "under false pretences." We make use of the language made use of in the law of England.

251. For embezzlement, for instance, a clerk or servant taking his master's money?—We have the expression "crime de péculat." In Terrien there is a great deal about it. We should punish for fraud or peculation. Cases have been brought before the Court here of that kind.

252. Is not it the fact, that the Court applies its power of punishment to those cases as they arise, considering them as offences against society?—Yes: and I consider that there is nothing to regulate it in a definite way. You could not open a book to refer to the particular punishment which should be awarded.

253. Nor a definition of the crime?—No.

254. (To Mr. *Dupré,* Avocat Général.) How would you frame an accusation for obtaining money under false pretences?—There have been one or two cases lately, which I will search for.

255. Mr. *Hammond.* It would be "sous de faux prétextes."

256. That is taken from the English law, in fact?—The phraseology of the accusation is taken from that. I think the circumstances would be related in the mise en accusation.

257. Mr. *Dupré.* The frame would be, under such circumstances having obtained from such a person under false and criminal pretences.

258. You are aware that ours is statutory in England entirely?—Yes.

259. Mr. *F. Godfray,* (Advocate.) Before the statutes were established, there was a power of punishing a person under the common law.

260. Mr. *Hammond.* We should be guided in the way of adjudicating the punishment by the nature of the fraud and the magnitude of it.

261. Mr. *Evans.* As to forgery, the Court has never punished with death here: it has never been made a capital felony here: it has always followed the common law.

262. How do you define felony in your law?

263. Mr. *Hammond.* We have considered that wherever there is a confiscation in the punishment: that is what assists us, as much as anything, to define what is felony.

264. Mr. *Evans.* It is never used in the words of the acts of accusation here.

265. Mr. *Marett.* It is not a word recognised.

266. I observe, in this paper with which the Vicomte has furnished us, the word *felony* occurs once or twice as a familiar word applicable to the law. I do not find it in your proceedings.

267. Mr. *F. Godfray,* (Advocate.) They have used it as an English term, and given it the English signification; but you will not find it in any documents proceeding from the island.

268. Mr. *Le Gallais.* I think they use it in Guernsey.

269. I observed, at the trial on Saturday week, the words "vol avec effraction" were used, and "sans effraction."—That is theft committed with effraction and without effraction. When the prisoner has been found guilty of having committed the act, the Court uses its discretion as to what is the punishment to be awarded.

270. Mr. *Evans.* If a burglary were committed here, it would be laid "vol avec effraction." The law is a sort of Indian rubber. It has been used for various purposes, and is stretched according to the necessity of the case as it arises.

271. Why is it that you apply English incidents at all in your treatment of crimes?—Merely as considering that they are the general principles of law.

272. For instance, when a crime is punished more if committed at night, than if by day, you take the general principle of the English law?

273. Mr. *F. Godfray,* (Advocate). The person is, in fact, accused of robbery; only there are aggravating circumstances to the robbery. But it would not be said that there was a punishment for robbery, and another for burglary. The robbery would be the crime; but the Court would punish more severely a person who had committed a robbery at night, or with violence.

274. Are the English books cited as authority for that?—The English books would not be quoted, as far as the crime of burglary was concerned.

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* Code of Laws for the island of Jersey, 171.

275. For what purpose would they be quoted?—Sometimes they are quoted. I must say that the English books have been only lately quoted in the Royal Court; formerly they were not so.

276. Unless they are to establish the crime, I do not see what reference they have to the matter in hand?—I think they are only used by Sir John De Veulle in his summing up.

277. Sir *John de Veulle.* I have also heard advocates use them.

278. (Mr. *F. Godfray,* Advocate.) I do not believe the Bailiff who preceded Sir John ever quoted English authors.

279. Mr. *Evans.* If books are found to make in favour of the advocate, they are quoted, whether they be English or French. As to the distinction existing in the English law, whether there has been a sufficient taking, or whether there has been a breaking, and all those distinctions, books of the English law are quoted to explain to the Court, or the jury, what is or what is not a breaking or taking.

280. (To Mr. *F. Godfray,* Advocate.) To establish the fact of effraction, an authority produced from an English book would be received. Supposing, for instance, a person were to break a window, and put his hand inside, and take something?—That would be effraction. I do not think we should enter into all the nice distinctions, and say, lifting the latch of a door would be effraction. No person in the island would think of quoting the English law upon that subject. There must be an actual breaking, to constitute an effraction, which in the crime of burglary would not be necessary. Our mode is the most simple mode. Effraction must be proved. Effraction means breaking; and breaking must be established. Unless you wish to accumulate other definitions, and say, such and such an act shall be called an effraction, the meaning of effraction is quite clear to every person of common sense. It is not lifting a latch, but breaking.

281. We received answers to the effect that the English authorities are used in this Court?—I do not think they were ever used by any presiding judge in the island, before Sir John De Veulle.

282. Would the French authorities be used as to effraction?—Effraction would be established by the signification of the word, as taken in its common sense, meaning, that is to say, breaking with violence.

283. Is there any authority but common sense to govern the meaning ofthat word?—Certainly not.

284. Mr. *Hammond.* I would only observe that, when we have quoted from English books, it has been in elucidation of a particular fact or circumstance which is brought forward, connected with the Criminal Law. For instance, as to what would savour of reality, and what would not, I should look to the English authorities to see their definition; and so with regard to the question of burglary, to ascertain what would be a breaking. The question might be, what is a breaking? And that might lead to a great deal of difference of opinion. The limit might not be very easily ascertained. If it has been ascertained by English authorities, they would be quoted, I think; and I think they would be quoted by the crown lawyers in support of their accusation. Before I was at the bar, I have heard other practitioners refer to English books with regard to those different definitions; that is, in some measure, to throw a light upon their own arguments and reasonings upon the different questions they have had to submit, they have supported them by those definitions, showing the way in which those who have written upon those subjects, have considered them.

285. As we refer to the civil law in England?—Yes. And, whenever we could get at the foundation, or at the why and the wherefore, that the law has been originally arranged, we should quote it as much as possible to elucidate the particular law, or the particular question which may be submitted to the jury, or to the Court. The advocates before me used to do so; and so have the crown lawyers used Blackstone; that is more generally used than any of the English books, as it dwells very much upon the definitions of crimes. It is not necessary to enforce them as law, but as explanations of that which the lawyers would wish to bring forward for the consideration of those who have to adjudicate upon the question.

286. Mr. *Dupré.* Since I have been at the bar, thirty one years, I have in almost all cases seen English writers on the criminal law quoted as great authorities for the proper definition of different offences.

287. Mr. *Le Breton.* I think that is the case, by both parties.

288. As to what constitutes a breaking, have you heard it quoted?

289. Mr. *Dupré.* I have heard the English law quoted for that particular purpose.

290. Supposing a man did not walk all the way into the house, but broke a pane of glass, and thrust his hand through, or lifted a latch and thrust his hand through, would that be a question argued by a reference to English law?—Yes; it would be argued by the officer of the crown, as being burglary.

291. Would the English books be quoted?—Yes.

292. Mr. *F. Godfray,* (Advocate). Has Mr. Dupré ever heard a matter argued to be burglary, which consisted in merely lifting the latch of a door, without breaking?

293. Mr. *Dupré.* I think I could produce you a precedent of that nature.

294. Do you recollect how that ended?—I do not recollect the case; but I will look out for it by the next day of meeting.

295. Mr. *Le Sueur.* In the cases I have seen of persons accused of crime, "vol avec effraction," the crown officers have proved that there was actual breaking. Where a door has been bolted inside, for instance.

296. (To Mr. *F. Godfray,* Advocate.) I understand you to say, with regard to effraction, that it would be decided, not by any written authority, but by the skill of the advocate in defining it, and that the sentence would be in the breast of the Court.

297. I am sorry to have been so misunderstood. I mean that the word effraction would be

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taken in its true and literal sense, and no fiction put upon the breaking; that is to say, it would be an actual breaking, and not merely a fact tantamount to a breaking established in point of law. There are some definitions in the law, which say that such and such a fact would be considered as a breaking. But even Blackstone gives different views of what would be an actual breaking, and what would not be so.

298. Take any other crime. Supposing the question was as to the crime of rape; would there be any authority produced to ascertain what a rape was?—Yes; I think, if you examine most of the crimes, you will find them well defined in Rouillé and Terrien.

299. Do you cite any authority from any law book as to the definition of any crime?—Yes.

300. In what instances?—You cite Rouillé.

301. Besides Rouillé, do you cite any?—Terrien, just the same.

302. Any crime which is not defined in Rouillé or Terrien, how do you ascertain that?—I think you will find very few crimes which do not fall under one of those heads; and the discretion is left to the Court to apportion the various punishments between the one and the other. Burglary, for instance, is a theft in our law. It is a theft committed with aggravated circumstances.

303. Take larceny. Supposing a person were to pull up a tree from the ground, would that be theft?—Yes, if he takes it away.

304. Supposing the act of taking it away and pulling it up, were the same act, would that be theft?—Yes.

305. Is there any definition of theft in Rouillé, including a case of that kind?

306. Mr. *Hammond.* I could not agree to say that it would be a theft. I should say it would be part of the realty.

307. Mr. *F. Godfray,* (Advocate.) Robbery is in Rouillé.

308. Is there this distinction: that, if you take a thing attached to the realty, it is not a theft?—No; there is no such distinction in Rouillé.

309. Mr. *Hammond.* I do not know how, by the definition Rouillé gives of robbery, you could make that a robbery. On the same ground, if he knocks down a party wall you might do so.

310. Mr. *F. Godfray,* (Advocate.) And it has been so decided by the Court against your own pleading.

311. All the Commissioners are asking is what authorities you use?—It would be robbery by the law.

312. If Rouillé made it so, and not if Rouillé did not make it so?—Yes, just so.

313. On a question of that sort, would English authorities be cited?—I do not see the use of citing them.

314. Would they be received by the Court as authorities?

315. The Court would receive any authority which was cited; but it would be as argument, not as authority.

316. Mr. *Marett.* The English authorities are not considered as binding upon the judge. They are only quoted to elucidate the question in hand.

317. Out of Rouillé and Terrien you have no authoritative definition of crimes?—No; not that is binding upon the judge.

318. Mr. *Hammond.* Supposing a person is accused of robbery: take, for example, such things as garden shrubs, or fruit trees. I have proposed to the Court, as a legal question (not to the jury, but to the Court), that the accusation was not supported by the evidence, because the evidence amounted to this, that the person had gone into the garden, and had up-rooted a certain number of trees, and carried them away, that he did not leave them as chattels which were taken off afterwards, and that therefore it was a trespass. I grant it was overruled; but I considered, as that was the definite accusation against the individual, it could not be made a robbery. Nor can I conceive that it would be so, even in quoting Rouillé. I consider I was within the legitimate rules of defence in showing that it was not a robbery. Just the same as if any part of a house was knocked down, and separated for a time, it would not be a charge of robbery, but it would be a charge of trespass; but the quotation I made was in support of my view, that it was not a robbery. I believe there have been statutes in England, made as to cases of cutting trees, and so forth, because they could not be brought under the definition of robbery, and required a new enactment to meet them.

319. Mr. *Evans.* With regard to the use of English authorities, it is not a modern practice, as far as I can judge of it. Upon reference to Le Geyt's manuscripts, which are considered to have some authority here, you will find that he constantly quotes English authorities; Dalton, more especially.

320. Mr. *Marett.* It is very proper, in using words, that the sense in which they are used should be understood. If by authority you mean any opinion or regulation binding upon the Court, assuredly the English law cannot be considered as such.

321. Mr. *Evans.* In the present day, American authorities are cited in the English courts. Mr. Justice Story is constantly cited. Mr. Godfray, I am aware, has always protested against the use of English authorities in the Court.

322. Mr. *F. Godfray,* (Advocate.) If I understand right, in Sir John Dumaresq's time he would not only not permit an English book to be quoted as an authority, but he would not allow them to be used in argument.

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*John W. Dupré,* Esq. (Avocat de la Reine), examined.

J. W. Dupré, Esq.

323. The Commissioners understand, from the written answers which have been given to

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their queries, that the first step, when there is an offence committed, is taken by the Police?—Yes: on a verbal complaint of the person against whom the offence has been committed.

324. We understand that for St. Héliers there are one constable, four centeniers, six vingteniers, and twenty four officers?—Yes.

325. For St. Aubin there are one constable, two centeniers, two vingteniers, and fifteen officers?—Yes: that is for St. Brélade's.

326. For other parishes, one constable, two centeniers, four vingteniers, and four or five officers?—Yes.

327. What emoluments do the vingteniers receive?—The vingteniers have a small commission for receiving confiscations, and upon the road rates.

328. Are the vingteniers confined to any particular district, or do they act generally?—Each acts for his own district. The parish is divided into so many districts.

329. Generally speaking, in what rank of life are those gentlemen? The constable and the constable's officers are not of the same rank, I suppose?—No. In town, the constables' officers are principally tradesmen. In the country parishes, they are small farmers, or their sons, holders of property in the parish.

330. Generally speaking, have all those officers other occupations besides that of attending to the police?—All of them, I should say.

331. Is there anything like a night or day patrol?—Neither the one nor the other. The officers generally, when they are called on by the parties complaining, go and make the necessary inquiries.

332. They are not upon the look out?—No.

333. What is the population of St. Héliers?—It was about 23,000 at the last census. I should think it must have considerably increased since. I should say it must now amount to 26,000 or 27,000.

334. It is a port, with characters of different sorts resorting to it as a port?—Yes, a great variety.

335. Speaking of the lower part of the population, should you say it was one which required less or more watching than the population of ordinary towns, or much the same?—I think it is more necessary to watch it than most towns of the same size as St. Héliers.

336. Will you state, in detail, why that occurs to you?—Necessarily from our situation being between two great countries, and being a great resort of persons who have committed crimes in their own countries. They take refuge here to avoid the laws there.

337. Does that observation apply to St. Aubin's at all?—No: not to St. Aubin's, nor to the country parishes.

338. I thought St. Aubin's possibly might be a town parish, to some extent?—It is not a large town: it is a port; but there are very few vessels frequenting it.

339. I understood you to say that some of the constable's officers were tradesmen?—Yes.

340. Are they persons who are likely to have any interest in public houses?—There are many who are spirit dealers; and possibly they may sell to houses which sell in retail.

341. To taverns?—Yes. There are some police officers who are themselves tavern keepers. I know of one in my own parish.

342. Which is your parish?—St. Lawrence.

343. There is the case of Mrs. Le Gendre, which has been commented on a good deal in England: how long ago did that happen?—Six months.

344. Her's was not a licensed house, was it?—No.

345. It was a murder committed in an unlicensed house, was not it?—Yes, on one of the police officers.

346. Mr. *Evans.* It was in a brothel.

347. And not a licensed house?—No.

348. (To Mr. *Dupré.*) Was there not some charge at the time of some of the Police having supplied liquors to the house?—I have heard it.

349. Was that made out?—I know there were arrests made on her property for the supply of liquors by some officers of Police, one of whom had just left office.

350. Was the party supplying the spirits a policeman at the time?—Yes, one of them was; the other had been replaced a few months before: his time was up, and he had been replaced.

351. Generally speaking, do you think the force is efficient for the prevention of breaches of the peace and robberies?—As to prevention, I think the force is entirely useless. From the very nature of the force, it cannot be useful for the prevention of crimes. They are often very active in the discovery of crime, when it has been committed.

352. Supposing a person has his head broken, or his pocket picked, does he know where to go at once? Is there any station to apply at?—No; he must go to the constable's house, or to wherever he may find the police officer.

353. If he happens to know where the police officer lives, he may go there directly?—Yes.

354. Do you think, generally, their residences are known to the inhabitants?—Yes; I think generally they are to the inhabitants.

355. The head of the Police of St. Hélier's, I think, is Mr. Le Sueur?—He is the head of the town Police.

356. His house would be known, of course?—Yes.

357. Do you know any instances in which gentlemen resident in the place have contributed any money to maintain a watch at their own expense?—In several streets the inhabitants have contributed to maintain a private watch, for the protection of their property at night. I know of eleven or twelve such associations: there may be more.

358. By night?—Yes.

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359. The twenty four officers, I think, have no power to act upon suspicion, but must see the offence committed?—The constables' officers can only act if a party is taken committing an offence in their presence. That is laid down in the law. "Les vingteniers et les officiers du connétable pourront, dans le cas de flagrant délit, dans l'étendue de leurs paroisses respectives, faire tous les actes de police qui sont de la compétence du connétable et des centeniers, étant tenus de les en informer sans delai: ils seront aussi tenus de conduire au connétable ou à l'un des centeniers les personnes saisies, et les remettre à leur disposition."

360. That limitation is implied in the technical meaning of the word "vingtenier," I presume?—Yes.

361. What is the officer who can give them authority to search? They can act upon authority, cannot they?—They cannot search without the presence of a constable, or one of the centeniers.

362. Nor arrest?—Nor arrest, except in the case laid down in the article of the law which I have cited. The vingteniers can seize or arrest parties within the limit of their own vingtaine or district; but they must take the party so arrested to the constable, and report the case to him.

363. You mean that they may arrest upon information within their vingtaine?—Yes.

364. The constable, I presume, cannot act out of his parish?—No.

365. The town of St. Hélier's is all comprehended within one parish, is it not?—The town Police applies as well to the country part of the parish of St. Hélier's as to the town itself.

366. I mean that the mass of houses does not stretch into any other parish?—No.

367. Mr. *Edward Nicolle.* What is the town, properly so called, extends to St. Saviour's itself: George Town, for instance.

368. Mr. *F. Godfray,* (Advocate.) The part of George Town which is in St. Saviour's parish is not very large.

369. (To Mr. *Dupré.*) Supposing you were going from hence to George Town, where should you cross the frontier?—At the house called Plaisance.

370. Does not it follow, from what you have stated, that the vingtenier can only act out of his vingtaine when the constable is present?—He may assist the constable at all times; but he can only act alone within the limits of his vingtaine.

371. The constable and the centeniers, we understand, are elected by the rate-payers in each parish?—Yes; the constable and centeniers.

372. What is the lowest property which pays rate, do you suppose?—If a man has 40*l.* he pays rate: if he is worth 40*l.*, either in real or personal property.

373. In point of fact, do they generally rate down as low as that?—In many instances they do. There are a vast number of electors who have that qualification.

374. How are the vingteniers and officiers de connétable elected?—By the Parish Assembly.

375. What constitutes a Parish Assembly?—There is the constable, the rector, and a description of persons called Principaux.

376. What are they?—A portion of rate-payers according to the amount of rate they pay. In town it is 20 quarters; in some of the parishes it is 15 quarters; in others 12; in Trinity 10 quarters; and in two parishes, I think, it is 8 quarters.

377. By town you always mean St. Hélier's?—Yes. There are also present the police officers, and the members of the Court. The Jurats, the Greffier, the Vicomte, and the Crown officers, each in their own parishes, have the right to assist as members of the Parish Assembly; also the Procureur du Bien Publique, the churchwardens, and the collector of the alms at the door, and those who have before served the office of constable or centenier. They are members for life.

378. They would lose it by non-residence, I presume?—Yes.

379. And recover it probably by residence again?—Yes; that has been the practice. The following is the regulation on the subject.

"Les magistrats, ou les officiers de la Cour Royale, savoir: le Procureur Général du Roi, le Vicomte, l'Avocat Général du Roi, et le Greffier, les Recteurs (ou le vicaire dûment appointé par l'ordinaire, et en absence hors de l'île du recteur, ou pendant sa maladie), et les Connétables et Centeniers, ont séance et voix délibérative comme principaux dans les Assemblées Paroissiales. Ceux qui auront exercé les charges soit de Connétable ou de Centenier auront également droit d'assister et voter à l'Assemblée Paroissiale, quoiqu'ils ne soient plus en charge. Les Procureurs du Bien Publique, les Surveillans, les Vingteniers, les Officiers du Connétable et les Collecteurs d'aumones, y ont droit seulement pendant leur gestion. Le nombre des Principaux qui seront membres des Assemblées Paroissiales est réglé pour chaque paroisse, comme ensuit, savoir: Pour la paroisse de St. Hélier, tous ceux qui payent un rât de vingt quartiers et au-dessus: pour les paroisses de St. Ouen et St. Sauveur, tous ceux qui payent un rât de quinze quartiers et au dessus; pour les paroisses de St. Brélade, St. Pierre, St. Grouville, St. Martin, St. Laurens, et St. Jean, tous ceux qui payent un rât de douze quartiers et au-dessus; pour la paroisse de la Trinité, tous ceux qui payent un rât de dix quartiers et au-dessus; et pour les paroisses de St. Clement et Ste. Marie, tout ceux qui payent un rât de huit quartiers et au-dessus."

380. The police, therefore, are to a certain extent influential in the Parish Assemblies?—They are very influential in every Parish Assembly.

381. It would not be necessary that those parties should be rated, I suppose?—No: in virtue of their office they are members of the assembly.

382. Taking the parish of St. Hélier's, what is the number of official members who constitute the Assembly? How many official members are there in the Parish Assembly at the present time?—I could not tell you at this time.

383. Mr. *F. Godfray,* (Advocate.) There would be about 50 altogether in the town of St. Hélier's?—From 40 to 50.

384. Mr. *Marett.* It must be remarked that the greater part of the persons having a right

to vote on account of having held office previously are Principaux, and therefore vote in their own right.

385. Mr. *Nicolle.* Many of the Police are members of the Parish Meeting by virtue of their own right.

386. (To Mr. *Dupré.*) Do you agree that most of those who have exercised the office of connétable or centenier would be entitled to vote as Principaux?—Yes; no doubt a great many would. I cannot say that they all would.

387. How is the rate made?—It is made by the Parish Assembly.

388. Is there any mode of correcting errors or omissions in the rate? Or, is there any appeal against the rate?—There is no appeal against any act as far as the Parish Assembly goes. They may rate whom they please; and there is no appeal against their decision, except the party himself does not wish to be rated: he then comes before the Court, and declares that he has no property.

389. In the case of an omission from the rate is there an appeal?—The party who is omitted from the rate may apply to the Court to be allowed to make oath of the amount of his property. He may bring the constable before the Court, and swear in his presence to the amount of his property, and he is then rated at half the amount that he states his property to be; but there is no appeal whatever against any improper rating on the part of the parish if the parties are willing to bear it.

390. Is the remedy confined to a party wishing to be discharged from being a member of the Parochial Assembly at all on account of his having no rateable property, and a person omitted wholly from the rate?—Yes.

391. Can any person appeal because he is rated too high?—Yes, if he has been rated above half the value of his property.

392. Can he appeal upon the ground that another person has been rated too low?—No.

393. Or too high?—No.

394. Would the consequence of an appeal against the omission of a person from the rate necessarily be to rate him at the half of his property?—Yes, while probably the other inhabitants of the parish would be rated at one fourth or one fifth, or one sixth of their property, or even one seventh or one eighth. There is no regular rate.

395. Is there any law regulating the right of appeal?—There is. "Toute personne qui se trouvera surchargée, ou croira devoir être inscrite sur la liste du rât, aura le droit de faire convenir en justice le connétable, ou chef de police de la paroisse, afin d'être admis à prêter serment du montant de sa propriété, pour que son rât soit réglé en conséquence; et ce aux frais de la paroisse, si le réclamant a fait des démarches à cet effet lors de la confection ou de la rectification du rât paroissial."

396. That is from the law of the 14th January, 1833?—Yes.

397. There is also Article 2, which appears to give the qualification for rating?—Yes. "Nul ne sera porté sur la liste des contribuables d'une paroisse: 1°. S'il n'y a été domicilié an et jour, excepté dans le cas prévu par l'Article 3. 2°. S'il ne possède dans ce pays, soit en meubles, soit en héritages, la valeur de deux quartiers de froment de rente annuelle, la somme de trois cents trente trois livres six sous huit deniers étant estimée valoir un quartier de froment."

398. Is the rate, in fact, formed in accordance with that law which you have just read?—No; not at all.

399. In what way does it differ from it?—I do not suppose there is a person on the rate list in the whole of the island who is rated at half his property, except those who are obliged to appeal to get a vote. Article 3 says: "Tous ceux qui possèdent des héritages dans le pays, sans cependant y résider, seront portés sur la liste des contribuables de la paroisse où la principale partie de leur propriété sera située." Article 4 declares: "Toute personne ayant les qualités mentionnées dans les Articles 2 ou 3 sera taxée à un quartier, et celle possédant un propriété plus considérable sera taxée à la moitié de la value de son bien, en suivant la proportion établie dans l'Article précédent pour les meubles; sans cependant, qu'il puisse jamais exister sur le rât aucune fraction de quartier."

400. From the nature of the rate, is not there a great deal of difficulty in ascertaining what is the property of the person?—Very great difficulty. With respect to real property, it can be easily ascertained; but, as to personal property, there are no means of coming at it at all supplied by law. It can only be guess work.

401. Could it be ascertained by any means which would not subject a person to very unpleasant inquiry into the state of his affairs?—None.

402. Is not it the case, that at present it is very difficult to ascertain who is legally rateable and who is not?—Yes, unless in the case of a person of real property.

403. Is it your opinion that the mode of rating which would be most beneficial would be to confine the rating to real and visible property?—That is quite my opinion; and that the property should be valued by persons who are disinterested, and not by the Parish Assemblies.

404. We have heard from you that the Parish Assembly make the rate?—Yes.

405. The rate payers elect the constable?—Yes.

406. Is the office of constable at all an object of political ambition in the island?—It is a place which is very much sought after.

407. You said, just now, that the rate ought to be made by *disinterested* persons. With what view did you use that word?—I look upon every Parish Assembly to be interested in making the rate. Naturally, those who compose the Parish Assemblies keep themselves as low as they possibly can; and many are excluded from the rate on account of their political opinions in most of the parishes of the island.

408. I observe that, by law, a great number of the persons composing the Parochial

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Assembly are members of the Police. Is it your opinion that they are a sufficient number to influence the Parochial Assembly in making the rates?—I think it may be stated that, in every parish but one, in this island, the Police form the majority of every Parish Assembly. At St. Brélade's I think they are about divided.

409. Have you any mode of judging how far they are in the habit of voting and acting together? Do they in fact form a party in the Assembly?—In every Parish Assembly but one the Police form a political party. In St. Ouen's the police officers are more numerous than the rest of the Assembly.

410. The Police having this influence in the assembly, and the Parish Assembly making the rate, I need not ask you whether the Police have not great influence in the electing of a constable?—Undoubtedly. And in every public election, from the office of Jurat downwards.

411. By whom are the Jurats elected?—By the rate payers of the whole island.

412. A Jurat does not represent a particular parish?—No.

413. Is the qualification which gives a right of voting for Jurat the same that gives a right of voting for constable?—The same.

414. When a vacancy takes place in the office of Jurat by death, what is the course taken to fill the office?—The Royal Court meet. The parishes are divided among the Jurats, one to each Jurat. The Bailiff first choses; and then every Judge in rotation.

415. There being one vacancy, the Bailiff and eleven Jurats will collect the votes in the eleven parishes?—Yes. Then the place of the Jurat deceased, or of any Jurat who is absent, is supplied by the Crown officers, or the greffier, or the officers of the court, according to the number.

416. Is it the duty of those officers, whom you have mentioned, to take the votes in the different parishes?—Yes. Each one in the parish to which he has been appointed. The day on which the election is to take place is fixed by the court, always on the following Tuesday after the court meet, after the funeral of the deceased Jurat.

417. And, I suppose, the candidate who has the majority of all the votes is the successful candidate?—Yes.

418. You stated that the Police, in the management of the parochial business, are in the habit of acting a good deal as a party. Do they act as a party in the electing of a Jurat?—Yes. In some parishes they are of one party; and in some of the parishes they are of the other party.

419. Is it your opinion, from your experience and long residence in the island, and from watching elections as an officer of the Crown, that the Police materially influence the election of the Jurats in this island?—It is.

420. You have said that the Police have very considerable influence in the election of Jurats. Have they also the same influence in the election of the constable and centeniers in the respective parishes for which they act?—Yes.

421. Is the election of a constable in fact a political contest?—It is.

422. And the same of the centeniers?—Yes.

423. As I understand you, in political importance it would tell in two ways; first, as constituting the constables who make a part of the States; and, secondly, also as affecting the election of a Jurat?—Yes.

424. That would be two thirds of the actual voting part of the states?—Yes.

426. Does one of the centeniers supply the place of the constable, if he happen to die, in the States as well as in the parish?—The senior centenier of the particular parish supplies the place of the constable, in case of sickness or absence, or of death, till a new constable is elected and sworn in.

427. You have said that the constables are members of the States? Yes; they form one third of the States.

428. Are they elected for three years?—Yes.

429. So are the centeniers and vingteniers, are they not?—The centeniers are. The vingteniers vary: they are elected for four years in some parishes, and for seven in others.

430. It must often happen that a gentleman's real property lies out of the parish in which he resides?—Yes.

431. So that a good deal of property would escape rating altogether, would it not?—No: he would be rated in the parish in which he resides for the whole of his property, wherever it is situated. He only votes in the parish where he is domiciled.

432. So that, if a person residing at St. Héliers claimed to be rated in respect of property in Trinity, he would appeal against the rate made in St. Héliers?—Where he resides he is rated.

433. If I am resident in Trinity, and my property lies in St. Héliers, I should be rated at Trinity, and should have to appeal against the Trinity rate in respect of my property in St. Héliers?—Yes.

434. Mr. *F. Godfray* (Advocate). The domicile is acquired by a residence of a year and a day.

435. (To Mr. *Dupré.*) Does this particular state of things create or increase the party spirit which is in the island?—Undoubtedly it does.

436. Is there then a strong party spirit throughout the island?—Very strong indeed.

437. A gentleman who is worth 10,000*l.*, and who has 1,000*l.* in Trinity, and 9,000*l.* in St. Héliers, and resides in Trinity, would be rated in Trinity for 10,000*l.*?—Yes; the gentleman possessed of 1,000*l.* in Trinity, and 9,000*l.* in St. Héliers, would be rated in Trinity, if he resided there, for the whole.

439. Do you happen to know how many newspapers there are in the island?—There are a great many; there are four printed in the English language, and four in the French language.

440. Are they published weekly or daily?—Most of them are published twice a week; I think all of them except two.

441. It has been stated to us, that it is the duty of the constable to arrest parties who are suspected of crimes. I suppose there is some oath, which the constable takes on his appointment?—Yes; he takes an oath.

442. The oath of the constable and of the centenier is very much the same perhaps?—It is very much the same; the following are the oaths taken by the different officers.

[The oaths of the constable, centenier, vingtenier, and officier du connétable, were read. See pp. 78, 79.]

[The oaths of the Inspecteurs pour la réparation des chemins publiques, and of the Procureur de paroisse were also read.]

*Serment des Inspecteurs.*

Vous promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous vous acquitterez de la charge d'Inspecteur pour la réparation des chemins publics, en la vingtaine de . ., paroisse de . . . , et que vous suivrez et mettrez en due exécution les réglemens faits pour la réparation et l'entretien des chemins, et ferez généralement tout le devoir attaché à la dite charge.

*Serment des Procureurs de Paroisse.*

Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que vous exercerez la charge de Procureur du bien public de la paroisse de . . . . ; que vous le conserverez et augmenterez comme le vôtre, et mieux, s'il vous est possible; que vous vous réglerez par le bon conseil et avis des Principaux et Officiers, et des chefs de famille, de la dite paroisse, et ferez généralement tous autres devoirs qui dépendent de la dite charge.

443. The constable acts upon the information of the party complaining of the crime, I suppose, where he does not see it?—Yes, or some denunciation of the crime.

444. Is the denunciation made on the oath of the party?—No.

445. What is the course taken by the constable upon a denunciation of the crime being made to him?—He takes up the party; he inquires into the grounds on which the person is charged; if it is a crime of a sufficiently serious nature to detain him in prison, he places him under the care of the gaoler, and obtains, before or afterwards, the sanction of one of the magistrates to keep him there till he can be presented in Court.

446. Prior to his obtaining the sanction of the magistrate for his being sent to prison, where is he detained?—Sometimes in the custody of the Police, and sometimes they take him direct to prison, and obtain the sanction of the magistrate afterwards.

447. They would be obliged to confine them in their own houses, I presume, supposing they could not take them to prison?—They take them to a public house sometimes.

448. Who is the officer who sanctions the placing in prison till the Court meets?—The Bailiff; or he appoints a certain number of Jurats to perform that function in his absence. The constable must apply to the Bailiff, or to any of those Judges so appointed by him. They are generally Jurats residing in the town.

449. At the present time there are three Jurats capable of so acting, I believe?—Yes.

450. For what time, under an order of those gentlemen, may a person be detained in prison prior to his examination or taking his trial?—It depends upon the sittings of the Court: generally the prisoners are brought up on the following Saturday.

451. Is Saturday the only day on which they are brought up?—They may be brought up on other days; but that day is usually chosen for bringing them up.

452. A person, therefore, might be detained in prison from the Sunday till the Saturday?—It would be possible.

453. Has the constable, of his own authority, any power to take bail?—Yes; the constable frequently takes bail, where the offence does not amount to felony.

454. That is to say, where it does not amount to a crime which subjects a person to the forfeiture of his property?—When it is under a robbery.

455. Supposing it was an attempt to commit a rape?—That would be a serious crime; he would take no bail.

456. Has he the power to take bail?—I do not think there is the power, strictly, by law; but it is often practised.

457. Do you know whether it has lately been the custom to take the opinion of yourself, or the Procureur Général, as to whether the offence would be proper for the constable to bail?—That has frequently been done; it has been permitted in favour of the liberty of the subject; but there is no special law giving such authority to the constable.

458. The constable could in all cases refuse bail upon his own authority?—Yes.

459. I think your method of taking bail is not like our's: you do not take the party's own recognizances at all?—No. The officer taking the bail states it in his return.

460. You do not add the person's own bail to the general bail?—No.

461. What is the form in which the constable takes bail?—The bail comes before him, and declares that he remains bail to such an amount for his appearance in Court on such a day; and the officer writes it in his Report, which he produces in Court.

462. Is there any written instrument, like what we call in England a bail piece, or a recognizance?—No.

463. The bail is bound by the recital in the constable's Report?—Yes.

464. What is the way of enforcing the penalty in case of default? Is the process summary?—Yes. If the party were not produced by the bail, the Procureur Général would move the Court to declare the bail forfeited, and to condemn the bail to pay the penalty.

465. The report of the constable, stating that the bail is effected, is the record, in short?—Yes: upon that judgment would attach.

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466. We understand that the mode of proceeding is for the constable to make a written Report, which is the authority for the Crown officers to prosecute?—Yes.

467. It is the information upon which their prosecution is founded?—Yes.

468. Is that information presented upon the oath of the constable?—He makes no oath at the time: it is supposed to be presented on his oath of office.

469. He does not make an oath applicable to each information?—No.

470. If it should happen that, upon a complaint made by a party to a constable, he should refuse to act, what course does the party take, if the constable refuses to make a Report?—If the party complained to the Procureur Général, he might bring a prosecution against the officer so refusing to act.

471. What mode is there of prosecuting the crime?—There is no mode of prosecuting the crime, unless the party is brought before the Court by the Police.

472. The Procureur Général has the general power of instituting *ex officio* informations which he exercises in State offences, the offences of officers, and so on. Besides the ordinary exercise of his power, has not he also the constitutional power to file an information in any case? Suppose he hears that a man has been beating another, could not he institute a prosecution in that case without the Report of the constable?—Yes.

473. Suppose, in the case of Madame Le Gendre, a constable had refused to make any report, could the Procureur Général have prosecuted for that murder?—Yes, upon the verdict of the coroner's inquest.

474. Take any case of crime in which the coroner would not interfere?—I do not know any case in which the Procureur Général has interfered by information for a crime.

475. As a question of law, giving merely a legal opinion, is it your opinion that the Procureur Général would have that power?—He would have the power.

476. That would be your remedy for the non-interference of the police?—Yes. In a case of that kind, the Procureur Général would bring an information before the Court, and would require the Court to order the party to be seized by the officer of the Court, and brought up: and, when he was so brought up, the accusation would be laid in the usual form.

477. Except that there would be none of those Reports which are made in other cases?—Yes.

478. The inconvenience resulting to the public from that mode of proceeding would be that there would be time for the culprit to escape?—Of course.

479. You have stated to us, in the early part of your examination, that some of the Police keep taverns?—There are instances of it.

480. And that they are a body who are united as a party. Are you of opinion that that has a tendency to interfere with the impartial administration of their duties as Police?—On some occasions, most undoubtedly it has.

481. Then (even though such a party spirit might not show itself in the case of a flagrant crime), in the event of disorderly conduct in public houses or brawls arising out of tavern disputes, is it your opinion that the circumstances which have been stated as to the Police do, in point of fact, interfere with their duty?—They must interfere with some part of their duties. I have known a case where a person has been grossly assaulted and threatened; he has applied to the Police, and could get no protection whatever: and he has been obliged to apply for the interference of the Crown officers to protect him.

482. Do you suppose that that refusal to interfere arose from personal dislike, or from party feeling?—I should think from party feeling, and also, in some cases, from personal dislike.

483. How are the licenses of public houses granted?—They are granted by the Governor, the Bailiff, and Jurats, on a certificate of the Parish Assemblies.

484. They are granted by the Governor, Bailiff, and Jurats as an assembly?—Yes.

485. Is that under any particular law?—Yes. There has been a very recent Act upon the subject.

486. Prior to that, what was the law?—It was the same law. This new Act was passed to give greater power to the Police, and also to provide for the regularity of the houses: but the Governor, Bailiff, and Jurats have always been the party granting the licences as far as our records go.

487. I suppose the Bailiff and Jurats may act in the absence of the Governor?—Yes: but they must have his sanction.

488. I need not ask you if the recommendation of the Parochial Assemblies has not very great influence in granting licences?—Yes: they are given upon their recommendation.

489. Is there any power of appeal, if a license is refused?—Yes: I have seen parties refused apply to the Court.

490. Parties to whom the recommendation has been refused?—Yes: they have applied to the Court.

491. Could you give the Commissioners any notion of the number of public houses there are in St. Hélier's parish?—I do not know the number exactly.

492. Are they very numerous?

493. Mr. *F. Godfray*, (Greffier.) There were last year 189 public houses in St. Héliers.

494. (To Mr. *Dupré*.) Who has the regulation as to the opening and closing of the houses?—The Police can enforce the regulations.

495. What are the hours at which public houses must close?—It is mentioned in the law that they must close at eleven o'clock.

496. Mr. *F. Godfray*, (Greffier.) That is under the new law, which was published yesterday, and comes into effect to day.

497. (To Mr. *Dupré*.) Was the former law the same?—There was no time specified in the former law.

498. The enforcing of that regulation lies with the Police?—Yes.

499. Has the constable the right to enter houses for the purpose of searching for stolen goods of his own authority?—He has.

500. No warrant from the bailiff or any other person is necessary?—No.

501. May he break open a door for the purpose of getting in?—He may.

502. Either an inner or an outer door?—Any door, if admittance is refused him.

503. (To *Sir John De Veulle*.) We learn that, in some instances, the Magistrate or Jurat before whom a person is brought exercises summary jurisdiction?—If he thinks there is not sufficient ground to detain him, he will tell the Police to liberate him.

504. There are some instances in which the smaller number appear to exercise a summary jurisdiction. Have you any legal definition of what constitutes an offence which may be so dealt with?—No: I believe not.

505. In a case of drunkenness?—That would be dealt with by the Court.

506. Has there been any ordinance in any way pointing out that jurisdiction, or creating it?—I believe not.

507. Your statutes, of course, give summary jurisdiction in particular matters?—Yes: the Acts of the States enable the Court to deal with particular offences.

508. Can you specify a few of the offences over which you have summary jurisdiction by any Act of the States?—I know there are some: I do not at this moment recollect what they are.

509. (To. Mr. *Le Breton.*) I believe you have the power of proceeding summarily, have not you, in particular offences created by Acts of the States?—There are fines for taking away gravel, and many regulations enacted by the States, in which the proceedings are summarily before two Jurats.

510. But nothing which may be called properly crimes?—Very often small crimes.

511. Have you any name for them?—No, there is no particular name. *Contraventions* is the usual term, and *délits* is another.

512. Mr. *Dupré.* In such a case as this the Procureur Général proceeds summarily. Under the law for the regulation of taverns the process would be summary.

513. Mr. *Evans.* There will be instances on the rolls where prisoners have been tried by the fewer number; but it is always by consent, I think.

514. How would it be in the case of an assault?

515. Mr. *Le Breton.* A case of common assault would be tried before two Jurats.

516. If a common assault is brought before two Jurats, and the party insists upon going before the enditement, he would go; but otherwise he may have the case disposed of there?—Yes.

517. Without pleading Guilty?—Yes.

518. He may have a contested fact disposed of by two Jurats?—Yes; by hearing the witnesses *vivâ voce.*

519. Might that be done in other cases by the consent of the party?—It would never be done by the consent of the officer of the Crown, if it was anything of a serious nature, except he pleaded Guilty. Then, of course, sentence is passed.

520. Are the Commissioners to understand that the Court and two Jurats do not sit except on Saturday?—They may sit every day.

521. Does the enditement sit on any day except Saturday?—They seldom sit on Saturday; it is generally on week days. There is a minor number every Saturday; that is a day of such general business that you seldom have a full Court on a Saturday, except in urgent cases in order not to interfere with the routine business.

522. Does the Term affect criminal cases in any way?—No: when the parties are in gaol, or if the man is under bail, he may wait till the Term to be tried, if he pleases.

523. He may insist upon it?—Yes.

524. Your Term begins shortly, does not it?—On Saturday next.

525. Are there any such cases waiting now?—There are one or two: two, I think.

526. Then they would be tried the first Saturday in Term?—No: a particular day is fixed. A day is fixed on the first day of Term by the Bailiff.

527. Does any reason occur to you why any evidence, except that which is necessary for the committal of a prisoner to custody, should be given in Court till the time of the trial?—There is no evidence given in Court.

528. I am supposing the matter to go to the enditement. Is there any reason why the evidence should go on from day to day being taken by the Court when the disputed fact must be decided by the enditement?—It is to prove the fact that the evidence is heard. According to the practice, when there is an accusation, if once the accusation is formed, the Procureur Général is allowed to inform. In that case the depositions of the witnesses must be taken down in writing; and the practice has always been that the evidence should be taken down in writing in the presence of the accused before two Jurats. That sometimes occupies several days; and it is only when the evidence is complete on both sides that the enditement is called before the full Court, and the evidence read to the enditement, and the defence made.

529. Has any advantage struck you in that method of taking evidence?—No; I do not see any advantage. If you take it in writing at all it must be made in that way.

530. Mr. *Dupré.* If you took it before the enditement or the grande enquête, it would keep them sitting four or five days.

531. Supposing the magistrate, before committing for trial, made a point of hearing the evidence upon oath which was sufficient, in his view, for committing him; and that evidence were kept and put into the hands of the prisoner's counsel for the purpose of using it, if he pleased. Would not that supply the want which Mr. Dupré is speaking of? Supposing a

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person were taken up, and the first step were to bring him before the magistrate, the magistrate would not commit him till he had heard evidence on oath which satisfied him. If then all the evidence were taken down in writing, and transmitted to the Court when the person is brought up to take his trial, the counsel for the prisoner having the privilege of seeing and checking the evidence, would not that answer every purpose?—I think it would be a great advantage; but it ought not to be limited to the evidence given before the magistrate.

532. At the time of the trial, the difficulty would be met in another way; because, when a man is tried, the Judge takes down the evidence minutely, and reads it over to the jury?—That is not the practice always here.

533. Would not that practice combine the two advantages, and save all the intermediate process?—It would be necessary then that all the witnesses should be bound to appear, because, on the trial, we have no means now of compelling the attendance of a witness. A witness may leave the island the very day after. We have no means of compelling him to remain in the island; but a preliminary examination before a magistrate would be of the greatest use.

534. The foundation of your proceedings is the information furnished by the constable?——Yes.

535. Would not it be an improvement that the foundation of the proceedings should be depositions taken before a Jurat on oath?—Yes.

536. Supposing a witness such as we see sometimes, half conscientious and half not, who will say what he will not swear, on his first testimony, which is not given upon oath: a man might be kept in prison for a week; and then, when the witness comes to swear it, he may not be willing to go to the full extent of his previous evidence?

537. Mr. *Le Breton.* That would be very possible.

538. Mr. *Dupré.* I knew an English person who came over to visit the island. He went to the market; and some person passed bad money among the market women. They pointed out this man as being the party who had passed this false money. He was put in gaol and brought before the Court; and, after being there a fortnight, when the women came before the Court to identify him, neither of them could swear that he was the person. He was immediately liberated.

539. Mr. *Le Breton.* The Procureur Général abandoned the prosecution immediately, of course. There were three women, I think: they had all positively assured the constable that he was the man.

540. Then the accusation is framed before anything has taken place upon oath at all?—Yes.

541. The enditement, we understand, is presided over by the constable or centenier?—The constable or centenier and his officers compose it. There must be a constable and twelve officers who have not given evidence.

542. Who selects the twelve officers?—The constable.

543. Those people whose names appear as contributing to the information are excluded from the enditement?—Yes.

544. Who determines whether the constable or centenier shall sit?—The constable sits in all cases in which he has not been heard as a witness or informer. We call the witness here in such case informateur. Though a man is accused in consequence of the constable's report, if the constable has not been sworn as a witness he presides at the enditement.

545. Suppose the case in which the constable acts upon a view of the crime, he sees the crime committed, and acts upon his own view: would that prevent his sitting?—Probably it would, because he would be sworn to give further details than those contained in his Report. If he was not sworn he might sit.

546. The evidence on oath is given before the enditement is summoned?—Yes.

547. So that the parties who could not officiate upon the enditement would be any of the police who had been sworn as witnesses previously?—Yes.

548. I suppose the use of the enditement is that a man should not be put upon his trial till a crime is charged against him upon oath. The first tribunal of any sort which decides upon the oath of the informateur is the enditement?—Yes.

549. Then, I presume, the intention of the intervention of the enditement is that a man should not be sent to trial till the charge is credibly made out against him upon oath?—He is not endité till that is done.

550. If, before it goes to the enditement, and before the man was brought before any tribunal, except that of the committing magistrate, there were a charge upon oath, why should anything intervene between that and the grande enquête?—There is no charge upon oath before the magistrate.

551. Suppose you were to say that nobody should be sent to gaol, or be put into prison for trial, unless the magistrate is satisfied, by depositions upon oath, that there is cause to try him: what would be the use of the constable and all those officers intervening between that and the grande enquête?

552. Mr. *Dupré.* I am of opinion that it would be of no use.

553. Mr. *Le Breton.* That is a matter on which opinions are divided.

554. What is the object of constructing the enditement in this peculiar way by the police officers?

555. Mr. *Dupré.* The origin of it was this: that, in former days, when a party was suspected in a parish of having committed a crime, the constable and his officers met and heard the evidence. If, from the information they had taken, they found there were grounds for bringing him to trial, then they indicted him, and then he was tried before the grande enquête. And I think there are some cases still extant in the books, where a prisoner has been tried by the enditement out of Court, and presented by the constable to be tried before the Court and the grande enquête, in consequence of the enditement framed by the police.

556. The constable's intervention followed the enditement, instead of preceding it?—Yes.

557. Supposing the same state of things to continue, and the necessity of a previous enditement to exist, do you know of any benefit arising from this peculiar way of constituting it?—No; I think great inconvenience arises from it.

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Mr. *François Godfray* (Advocate) examined.

Mr. F. Godfray, Advocate.

558. Is there any suggestion which you are desirous of making to the Commissioners?—I think it would be a great advantage taken away from the prisoner if the enditement were to be removed. Now he has the advantage of two juries: he would then evidently be deprived of the advantage of one of them.

559. In the system we have been speaking of, he would have another tribunal substituted for the enditement, in which the prisoner, before he is sent to trial, would have the accusation made on oath: he would have a magistrate instead of a second jury; and the evidence would be taken upon oath before him?—They would certainly prefer a jury in criminal cases to one magistrate. If it were the Royal Court who were the magistrates, and decided there was evidence enough to send the prisoner before a jury, then the jury would act under the impression that the Court had found the prisoner guilty; and that would have a great weight to induce them to find the man guilty also. One magistrate, if not connected with the Royal Court, would be a different thing, but, if it were before the Royal Court as it is now constituted, and the magistrates who sent the prisoner to trial were to sit on the bench, there would be a great influence over the other jury.

560. Your objection applies particularly to the jury seeing on the bench gentlemen who they knew had previously thought there was a case for trial?—I think the opinion of the magistrate, that there was a case for trial, would have great influence on the decision of the jury.

561. I suppose the fact of a jury having previously decided would also have an influence?—Not so much so. I do not think the grande enquête would abide by the decision of the enditement, or any other jury, so much as by the decision of the magistrate who is supposed to be versed in the law.

562. Why not?—Because they know they are the same class of men as themselves.

563. You think they would be justified in attaching more weight to a magistrate's decision?—I do not know that they would be justified; but I think it would have an influence in fact; and, as to *vivâ voce* evidence, I think, as we are now constituted in the island, it is necessary that the depositions should be taken in writing. We have an Attorney General, who is chosen from the ablest of the bar. He would have immense advantages in questioning the witnesses, and in his address to the jury, over a young advocate, who, most likely, to defend the interests of the prisoner, would require to read the evidence which had been taken.

564. The case supposed is one of evidence previously taken upon oath and handed to the counsel for the prisoner?—But other witnesses must be heard, I suppose, upon that day: and even the testimony of one witness may materially change the position of the case.

565. This part of your objection, I understand, rests upon the risk of the inequality of counsel?—Not only upon that: but I think, also, upon the inability of most jurymen to take notes of the proceedings, or, when they are together conferring upon the matter, to remember the precise words, or the import of the words, which had been used.

566. You think that outweighs the advantage of their seeing the witnesses give their evidence?—I think so, most decidedly. And the present system has this advantage: that, when a witness has been heard, either the Attorney General or the prisoner may call evidence to rebut his statement.

567. That advantage, as I understand, is not necessarily incident to the present system; is it?—Yes, I think so; because, in the case of *vivâ voce* evidence given before a jury how could you know what the witnesses would say so as to be prepared to contradict them?

568. You mean that evidence may be given one day, and evidence brought up the next day to contradict that evidence?—Yes.

569. The hypothesis of the Commissioners is, at present, that all that is now given against the prisoner at the enditement should be given previously to the magistrate and handed over in writing to the prisoner's counsel?—Supposing the witnesses for the prisoner make a statement in contradiction to the former statements which had been given, the Attorney General would have a right to rebut that by further evidence.

570. Does he do so in fact?—Yes; and the evidence is only closed when both parties are satisfied that they have no further evidence to give. After the enditement, both parties must say they have no more witnesses to be heard.

571. You are speaking now of the prisoner's position before the enditement; not before the grande enquête?

572. Yes; but his position before the enditement is much the same as before the grande enquête. He has, in fact, two juries, of which, if one is favourable to him, it acquits him.

573. There is no advantage is there, in the enditement as opposed to the grande enquête, except that arising from insisting that a man shall be twice tried?—The same evidence that is brought before the grande enquête is that which is brought before the enditement: that is, you have an appeal from one jury to another.

574. When a person is "criminellement endité," that becomes an Act of Court and is duly recorded?—Yes; that is, there is a decision made that the jury have found the man Guilty.

575. And that decision is recorded?—Yes. If the prisoner is not satisfied with the decision, he asks the benefit of the grande enquête. They sit two or three days afterwards.

576. Suppose the grande enquête acquit him: is not the consequence that there is still a

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record of his conviction upon the records of the Court?—It is stated that the jury has been unfavourable to him; but in the other case it must be the same. Supposing the magistrate said there were grounds for sending him before a jury, there is the decision of the magistrate, which would be recorded in some way or other. The very act of appearing at the trial would be saying, the magistrate has found you in a position that you should be tried.

577. The decision of the magistrate is a decision that the case is triable: the decision of the jury is in fact a conviction?—It is so.

578. Do you think, if a prisoner had his choice whether he would go before the twenty-four men, having previously had a conviction recorded against him by the constable and his officers, or whether he would have nothing of that sort but simply be sent by the magistrate for trial, he would prefer the former?—There would not be a prisoner who would not prefer being tried by two juries. It must be remembered that, when a constable files an information against a person, he can never sit as juryman. The moment he has had anything to do with an accusation, except in presenting the Report, which is only a matter of form, he cannot preside. It is very lately that the constable was sworn, because his Report was on his oath of office, and therefore it was considered as evidence given upon oath of all facts contained in that Report. His Report must be submitted to the enditement and the grande enquête. If he confirms it before the Court, there is no other mode of confirming it but upon oath: and then he cannot preside at the enditement. If he makes the Report, that Report is evidence of itself; and he cannot sit as constable.

579. Then you differ from the evidence given just now on that point?—Yes: and I have no knowledge of any case where the constable presented the Report, or where he had himself acted, in which he presided as constable: and I have been constable myself for fourteen or fifteen years.

580. In which parish?—In different parishes—St. Hélier's, St. Martin's, and St. Saviour's. The prisoner would take good care to call him as a witness, if there were any doubt about it.

581. A prisoner may prevent his acting, by calling him?—Yes.

582. I suppose there is some limit to that?—If the constable has arrested him, he might say, "You arrested me, and I call upon you to say under what circumstances you arrested me."

583. When a constable has made the Report, he cannot act as president of the enditement?—No.

584. The Commissioners take for granted that you do not limit your preference of this system to its value as giving the defendant a better chance of escape, but consider the question with a view to the interests of truth?—I consider it with a view to the best administration of justice: that is to say, a person who is guilty will be found guilty, a person who is innocent will be found innocent.

585. You mean that it gives a better chance for the discovery of the truth?—Exactly so.

586. Presuming that the bias of a policeman in England would be rather against the prisoner, would it be the same here?—We must not compare policemen in Jersey to policemen in England. The policeman here, not being paid for what he does, has not the same feeling: and then they are not in the same position of life, as Mr. Dupré has stated. There are a great many of those police officers who are principaux' sons, constables' sons; and many of the Jurats have themselves filled the position of police officers. There is one thing I should wish to state: that the Attorney General, whenever he thinks proper, may call upon the constable or centenier, upon the Attorney General's responsibility, to arrest a person and bring him before the Court. The Bailiff and Governor have also the same power. I state this, because it was not clearly stated by the Attorney General.

587. Have you known instances of that?—A great many. The Attorney General confers with the Police; or in some cases, even against their opinion, he would exert that power.

588. You think that is quite matter of course?—Yes.

589. Have you known instances in which constables have refused to arrest till ordered to do so by the Attorney General or by the Bailiff?—Yes: there have been instances. I do not know any case in which that has been objected to by a constable or centenier. There are many cases in which, the Police refusing to act, or not thinking the person should be arrested, the Attorney General has told them to do so, and they have arrested him. I remember instances in which the constable thought a case would not be bailable unless the Attorney General has told him to bail the prisoner; and that has been done.

590. You are not supposing a constable hesitating and going to the Attorney General for assistance, but where he has made up his mind it was not a proper case to be bailed?—Exactly so.

591. You say the constable takes the Procureur Général's opinion as to bail?—Yes; very often. I suppose, if he differed with the Attorney General strongly, he would consult the Bailiff.

[*The Witness withdrew.*]

Adjourned till to-morrow at ½ past 10.

*Tuesday, 8th September,* 1846.

Mr. *Philip Arthur* examined.

Mr. Philip Arthur.
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592. You live at Longville, I believe?—Yes.

593. What is your profession?—I am a merchant and shipowner.

594. How far is Longville from hence?—About a mile and a quarter.

595. In what parish is it?—In the parish of St. Saviour's.

596. Have you had any recent opportunity of forming an opinion upon the effectiveness of the protective Police here?—In many instances it is very defective.

597. Will you specify the particulars in which it strikes you as being so?—A late instance I had was this:—Mr. Clarke, my shipwright, informed me that one of my vessels had been stripped of her copper, and that he had taken the name of the party who was robbing the copper from the ship's bottom.

598. He had seen him?—Yes. I asked him if he would know him again; and he said, Yes: and he told me that the name was Payne, in Heate Street, and he said, "If you can get one, you can get the others."

599. Then both the offence and the residence of the supposed offender were in St. Hélier's.—Yes.

600. What did you do upon receiving this name?—I applied to one of the centeniers of this parish, Mr. Chevalier, who would not listen to it at all.

601. You stated to him what you have told us?—Yes.

602. What did he say?—He made use of very vulgar expressions, which I do not think proper to say to the royal Commissioners.

603. Expressions addressed to yourself?—Yes.

604. In point of fact he abused you? He applied some epithet to you?—Not to me, particularly; but that he need not care for my property.

605. What were the words which he used?—He said he did not care for my property, and I might watch it if I thought proper.

606. Did he give any reason for that?—No. I have heard no more since.

607. Perhaps he was engaged about something else?—No: that was the second time I spoke to him. I spoke to him twice.

608. Did he give any reason for neglecting your property in particular?—No. I have not spoken to him since about it.

609. Did he at the time?—He said he was not going to expose himself to be stabbed; and he would not do it. It was at the time that one of the centeniers had been stabbed here: it was a few days after: perhaps the excitement was the cause of it. I do not know.

610. You were not on any bad terms with him personally?—No.

611. Nor in a party way?—No. I never had anything to do with him.

612. What was the date of this?—It was the 1st of March, I believe.

613. In this year?—Yes, in this year.

614. Have you any other information to give us?—No.

615. Mr. *Philippe W. Nicolle.* I wish to state that Mr. Arthur, at the time, mentioned the case to me; and I remonstrated with Mr. Chevalier upon the subject, and told him that, if it was as Mr. Arthur stated it, he was very wrong, and that it was not doing his duty. And upon that Mr. Chevalier told me that Mr. Arthur refused to give the party in charge.

616. Mr. *Arthur.* No such thing: there were several people there at that time. I could not go and give him the information and refuse to give him the name of the party.

617. Mr. *Philippe W. Nicolle.*—You refused to prosecute.

618. Mr. *Arthur.* It was his duty to seize him, not mine.

619. (To Mr. *Arthur.*) Did you intimate any unwillingness to proceed?—He said he would not.

620. Did you yourself intimate any unwillingness in any way?—No. What business had I to go to him if I was not willing to proceed? I recollect that I was surprised at Mr. Chevalier's answer; and I met Mr. Nicolle in the Chamber of Commerce, and told him what Mr. Chevalier had told to me.

621. Mr. *Philippe W. Nicolle.* And I communicated with Mr. Chevalier upon the subject; and he said you told him the quantity was so small that you only wanted to give him a reprimand, and not to proceed against him.

622. Mr. *Arthur.* I said nothing of the kind.

Mr. *Abraham Jones Le Cras* examined.

Mr. Abraham Jones Le Cras.

623. Have you had any recent opportunity of observing the effectiveness or want of effectiveness of the Police?—Yes.

624. Will you state it?—In the month of February last, I was assaulted by a person of this town. I had previously heard that the assault was meditated, and had given information to centenier Duparcq.

625. Is he one of the centeniers of St. Hélier's?—Yes. I had given him information, and requested him to bind the party over to keep the peace.

626. Have they the power to do that?—Yes.

627. (To Mr. *Le Breton*). Is that so?—Yes.

628. The centeniers and constables have that power?—Yes. They do not take any bail in money. It is an injunction to keep the peace: and, if they break it after that, it becomes an offence.

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629. Then it is a warning, in point of fact, to keep the peace.—It is.

630. (To Mr. *Le Cras.*) Was your communication in writing?—Yes; to which I received no answer. It was sent by a friend in a letter.

621. Have you any reason to know that it came to the hands of Mr. Duparcq?—Yes, I have. The assault was afterwards committed.

632. Was it a blow?—Yes, several blows.

633. Where was it?—In the public streets of this town. I was accompanied by a friend at the time.

634. Is that Mr. Sullivan?—Yes. He immediately ran to vingtenier Mahy, who, as I am informed, refused to interfere.

635. You were not present, of course?—No.

636. Was this street within the vingtaine of vingtenier Mahy?—That I cannot answer.

637. We are informed that he could not act out of his vingtaine, unless the constable or some superior officer were present.—I do not know whether it was his vingtaine or not. After that, my friend went to the Attorney General, and informed him of it. In the evening, I wrote to Mr. Duparcq again, to enquire of him if he had bound the party to preserve the peace, and, if so, in what sum of money conditioned for the performance of the same. I obtained no answer. I wrote to the constable, Mr. Le Sueur, and informed him of the facts; and he requested that I would attend at his office the next morning. He wrote me an answer to that effect, in which he promised that he would take cognizance of the matter.

638. Have you the note here?—I have a copy of it; but not the note.

639. Will you read it?—"St. Hélier, 18th February, 1846.—Sir, I have to acknowledge the receipt of your letter of the 17th instant, and beg to request your personal attendance at my office tomorrow (Thursday) between 10 and 11 o'clock, when I shall take cognizance of any charge you may have to prefer. I remain, sir, your obedient servant, P. Le Sueur, constable of the parish of St. Hélier."

640. Did you attend?—I waited upon him according to appointment, and gave him every particular. He told me that he had made previous enquiries, and that he had ascertained that what I had stated was not true. I told him I found it very strange that he should exercise magisterial authority, and that I hoped he would give me an opportunity of proving it. He said he would consider of it. I heard nothing further from him.

641. Did you make any further application?—I complained to the Attorney General, after the matter had been brought before the Court by private suit against the party, to prosecute the party. I commenced a suit against the party, to which the Crown officer was joined.

642. A cause en ajonction?—Yes.

643. Against the party assaulting you?—Yes. I afterwards applied to Mr. Le Breton, the the Attorney General, to prosecute the police officer for dereliction of duty; and Mr. Le Breton declined.

644. And there the matter stopped, I suppose?—It did.

645. Did anything come of the cause en ajonction?—That went on and was brought to a hearing.

646. What was the result?—I recovered a judgment by the casting vote of the bailiff.

647. That does not come before the grande enquête or the enditement?—No: it is before a petty court. Mr. Bisson was for 10*l.* damages to the Crown, and 10*l.* to the plaintiff; and Mr. Winter Nicolle for 10*l.* to the Crown, but 1*s.* to myself.

648. A cause en ajonction carries both with it?—Mr. *Le Breton.* There is always a fine to the Crown; and sometimes there are damages to the party.

649. Mr. *Le Cras.* The bailiff gave his casting vote in favour of 10*l.* to myself and 10*l.* to the Crown.

650. In point of fact, you recovered 10*l.*, and the party was fined 10*l.*—Yes. The bailiff sided with Mr. Bisson's opinion, and gave 10*l.* to the Crown and 10*l.* to myself. The party appealed against the judgment to a full bench; and that is still pending; at least I suppose so. I am not aware whether the appeal has expired by lapse of time. It might be kept on for years; and consequently the judgment is worth little or nothing. The constable, Mr. Le Sueur, was in the Court at the time the case was heard, and, profiting by his position as Advocate, he sat by the side of the party's counsel, and prompted him to everything he could against me.

651. Who was counsel for the defendant?—The party's counsel was Mr. Marett. In fact it called for the interference of the Court. My counsel was Advocate Godfray.

Mr. John Sullivan.

Mr. *John Sullivan* examined.

652. Will you state where you live?—At Halkett Place, St. Hélier's.

653. What is your occupation?—I am a jeweller.

654. Were you present with Mr. Le Cras on the 1st of March last?—Yes.

655. Will you tell us what you know of the matter?—I met Mr. Le Cras, as he was leaving his office in Beresford Street, and we proceeded towards Catel Street, which is the next street to Beresford Street. As he was going home, he asked me to accompany him a little distance out of the town, as he understood there was an individual who intended to assault him. I did so. When we entered Cattle Street, I saw a man with a large whip in his hand.

656. You witnessed the assault?—Yes.

657. Did you upon that go to vingtenier Mahy?—Yes. Mr. Le Cras requested me to call upon the police in his name. Vingtenier Mahy's house being the nearest to where the assault took place, I went there: I found him at home, and related to him what had taken place. I said I thought Mr. Le Cras's life was in danger.

Mr. John Sullivan.
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658. It had been a violent assault, had it?—A very violent assault.

659. Upon making that complaint, will you tell us what Mr. Mahy said?—Upon that Mr. Mahy said that he would not move on any account.

660. Did he give any reason why?—He said that Mr. Le Cras called the police "illiterate policemen," and then he came to them for assistance. I did all I could to persuade him to come. He still persisted in saying that he would not.

661. What is Mr. Mahy?—He is a wine and spirit merchant. As I thought that it was unnecessary to call on any other member of the police, I called on the Attorney General, Mr. Le Breton, who was at the States' meeting,

662. Do you happen to know for what vingtaine Mr. Mahy acts?—He acts for Mont à Prêtre, Canton de Bas.

663. Is that the vingtaine?—No. But the vingtenier has the right, in case of flagrant délit, to seize any person in any part of the town.

664. If Mr. Mahy had acted upon your application, and had come with you, would he have been in time to have witnessed the crime?—Yes, he would; and he would have spared another assault to Mr. Le Cras: for, while I came here for the Attorney General, another assault was committed.

665. If he had witnessed it, it would have been a "flagrant délit?"—Yes. While I was gone, Mr. Le Cras left the first house in which he had taken refuge. Mr. Le Cras took refuge in a house, and was compelled to leave it by the persons who were afraid that the man would come in and ill treat him again; so that they asked Mr. Le Cras to leave, as they thought he could go home then. While I came here for the Attorney General, Mr. Le Cras left the house, and was again assaulted a second time.

666. You were not present then, were you?—No. Mr. Le Cras told me so when I returned; and I found him in another house to that in which I had left him. The Attorney General was kind enough to come down; and he met the police officer, Mr. Coutanche.

667. Is he a vingtenier?—No, a constable's officer.

668. Of St. Héliers?—Yes. He asked him to come with him to Mr. Le Cras's rescue, and he begged of Mr. Coutanche to accompany Mr. Le Cras out of town to his house.

669. Which he did I suppose?— He did.

670. Did you meet Mr. Le Cras by appointment, or was it accidental?—Accidental.

671. It was not you that carried the letter to Mr. Duparcq, was it?—No. I had the letter in charge; and I sent my man servant with it.

672. You have no means of actually knowing, of your own knowledge, that it was received?—When the man returned, I asked him, and he told me that he had delivered it.

673. (To Mr. *Le Breton.*) When a dispute is taken up in the form of a cause en ajonction, is it generally understood that that supersedes the prosecution?—For an assault.

674. It would not necessarily supersede a prosecution against the officer for not acting properly?—No.

675. Did you think it an insufficient case for prosecution?—When Mr. Le Cras applied to me, the suit had been instituted and was pending before the Court; and therefore I thought that, if his case were proved, he would obtain damages, and a fine would be levied for the Crown for a breach of the peace, and that I could not, during that period, take any other measure.

676. You thought the prosecution of the public officer for not acting would be premature, while the case was being inquired into in another shape?—Yes.

677. This was an application for what we should call in England an *ex officio* prosecution?—Yes.

678. Another sort of prosecution is instituted only by the constable being set in motion?—Yes. In this case, from conversations I had with the constable on the subject, who told me that he had taken the informations, I thought that I exercised a proper discretion in not taking any further notice of the matter.

679. Waiting the result of the first prosecution?—Yes.

680 (To Mr. *Le Cras.*) You did not see Mr. Duparcq himself upon the subject, to ascertain from him whether he had received your letter?—No.

Mr. *Philippe Duheaume* examined.

Mr. Philippe Duheaume.

681. What is your occupation?—Farmer at St. Ouen's. The house is called *La Robeline.*

682. Did it happen to you lately to have been assaulted by any body?—Yes.

683. When, and in what manner?—On the 16th July last, I and my servant were cutting grass on the hills called the Grantez. It was an open ground. My servant went to dinner before me; and I remained behind. After dinner, on their return, my servants told me that a neighbour of mine had been cutting grass upon my piece of ground. I told my servants to cut the grass, as they had been in the habit of cutting. The neighbour suddenly returned and found me with a rake in my hand, and seized me by the collar, and attempted to drag me on his own ground. I was then obliged to call one of my servants to come to my assistance, who tore away his hand from my throat.

684. Did you make any complaint to the Police?—Yes. About twelve days after, I went with my servants to complain of this assault to the constable.

685. You went yourself?—Yes, with my servants.

686. What policeman was it?—The constable, Mr. Le Cerf. Mrs. Le Cerf said, her husband was not there.

687. Is Mr. Le Cerf the constable of St. Ouen?—Yes. Mr. Le Brun is the first centenier.

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Mr. Philippe Duheaume.

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I went to him. Mr. Le Brun said, he would attend to it. I was to come the following evening, and he would see about it; and he told me he would speak to Peter Suret, who was cutting grass for Mr. Hacquoil when the assault took place. I went again, the following evening; and I saw Mr. Le Brun the next day, as I was coming to town on the road. He said, he had been to town, but had not had time to attend to it, but he would attend to it.

688. Did he afterwards attend to it?—He said, he would talk to Suret, and Stephen Gard, and that he would wait upon me, in order not to give me the trouble of going to him again.

689. This was Mr. Le Brun?—Yes.

690. Did Mr. Le Brun come to you?—No. I went to his house again. He said, he had attended to it. I asked him, whether I had told him enough in order to bind the party. He said he had taken measures, and that I might go about with safety; but he never would tell me what measures he had taken. I asked him, if he had bound him to keep the peace; but he would not tell me what measures he had taken.

691. Are you a rate-payer?—I pay one of the highest rates in the parish. There is only myself and Mr. D'Auvergne who pay a rate of 50 quarters. We pay the highest in the parish.

692. Have you been constable or centenier yourself?—I have been constable's officer at St. Hélier's, and centenier and constable.

693. Do Mr. Le Brun and yourself belong to the same party in the parish?—No.

694. Does the neighbour who committed this assault belong to the same party as yourself?—He did formerly; but I do not know, from what has happened, of what party he may be now. He has no vote in the parish assembly. He has voted for both sides of the question.

695. Have you been insulted in any other manner?—No.

696. Are you at all able to form an opinion as to what is the state of the Police in your parish as a protection against crime?—The Police act with the greatest partiality possible: they appear to encourage, not to prevent, crime.

697. Do you believe that the Police have always acted with partiality?—Certainly, always: and the police have great influence in the parish assembly.

698. Did the Police act with partiality when you were constable?—Certainly not: but the officers at times permitted Mr. Chevalier to come into the parish assembly of St. Ouen's, and sit down next to the constable, at the same time that they refused the Vicomte to enter, though he came for the same object.

Mr. Charles Romeril.

Mr. *Charles Romeril* examined.

700. Where do you live?—No. 9, Broad street.

701. What is your profession or calling?—I am connected with the press.

702. With a newspaper?—Yes. I am a reporter. On the 1st of August, 1845, appeared an article in the *Miroir* newspaper, which I could produce if necessary. It was an article merely stating that the Police had been to a picnic at Pontac, and that some of them had furnished gin, some wine, and some bread; and, as it was Friday, and it was the custom in this island to have a supper of tripes on the Friday, I said some of them had furnished the tripes. The next day, the Saturday evening, I met one of the party, Mr. John Alexander.

Is he one of the Police?—He was; he is not now. He was three parts tipsy. He addressed me in great anger, and asked me if I was responsible for what appeared in the paper which belongs to my son. My wife being sick at the time, and fearing that he should go to my house and make a row, I answered "Yes." He asked me if I would contradict a part of the statement relating to him; that he not had furnished the gin. I said I would. There was present, at the time, one Mr. Grirton and Mr. Manuel, who was the father of the police officer. He wanted me to go to his house, which, I believe, from what took place after, was to assassinate me, if I had gone. On the Monday, when I was crossing at the top of Broad Street, I was suddenly attacked by two young men, whom I knew afterwards to be the sons of Mr. Chevalier the centenier, who, without saying a word to me, knocked me down, one with a stick and one with his fist.

703. You were only knocked down once?—I could not get up again. They continued to strike me till assistance came. When I was taken, almost senseless, to a neighbour's house, they followed me there, and wanted to force their entry into the house against the people's will; but they were prevented. That was in the evening. I went and showed myself to the Queen's Attorney General, who saw the state I was in, and the wounds that continued to be visible for four weeks afterwards. The next morning, as I was going to the Attorney General, to know what to do about it, knowing that the police had a spite against me and that they would not do their duty, the Attorney General not being at home, just as I was coming back, crossing the square, I was met by young Manuel, the police officer, and centenier Duparcq. I had a stick in my hand, which had a dozen and a half of little points, about one eighth of an inch long, projecting out of it to grasp it, so that they could not take it out of my hands. I had had that twenty years as a protection. The centenier took it from me forcibly, to leave me exposed to the brutality of my assailants. I asked him then to arrest my assailants.

704. Were you at that time being assaulted?—I had been the evening before.

705. What took place at this time. As you were returning from the Procureur Général, was it that you met centenier Duparcq and Mr. Manuel, the police officer, and that centenier Duparcq took your stick from you?—Yes. I asked him to arrest them.

706. To arrest the people who had attacked you the evening before, you mean?—Yes. He said he would bind them to keep the peace the next time he saw them. When I saw the Attorney General, a little after, he advised me to go to some other of the Police.

707. This was after they had assaulted you?—Yes, the next day.

708. You asked him to arrest them for the assault the night before?—Yes, and he would not do it.

709. He refused to arrest them, but said he would bind them to keep the peace?—Yes; and he wanted to bind me to keep the peace towards them.

710. He bound them too, I suppose?—He said he would.

711. He did bind you?—He did. Centenier Le Cronier had been to my house, to bind my sons also to keep the peace.

712. How do you know that?—The centenier told me so himself. That is the centenier who was assassinated. I asked him also to arrest my assailants.

713. Did you mention their names to him?—Yes. He said he was very sorry for what had taken place; and I believe he was; for we were very neighbourly, and he was a good man: but he said that he could not do it, because, if people were to put anything in the papers reflecting upon the Police, of course they must take the consequences. In the evening of that day, when it was too late to go to any magistrate for an order of imprisonment, I was met again by centenier Duparcq, who took me up, and said I was his prisoner, and I must go to gaol. I ought to have said, before, that I went to the dean to have the register of baptism of the two Chevaliers. I went first to the clerk of the parish. Shortly after, I saw, in centenier Le Cronier's shop, centenier Le Cronier, centenier Duparcq and the Chevaliers. They were all looking at the stick which had been taken from me. The result of their consultation was that I was apprehended in the evening, and was put in gaol, to frighten me, I suppose, from instituting proceedings. I was obliged to furnish security of fifty pounds, to find a person to stand security for fifty pounds: that was the final security that the Court only could take. That was security that I would not attempt the lives of the young Chevaliers, or any one of the family. It was not to produce me in Court.

714. Who obliged you to furnish this security?—Centenier Duparcq. We went to the house of a friend of mine, who stood security for me. I repeated to him that I had requested him in the morning to seize my assailants. That he denied: so I repeated it to him again. I said, "if you deny it, I repeat it to you, before a witness." He said, "I am obliged to follow my orders." I said, "I know you have orders from some one; but who gave you the orders?" He said, "I am not obliged to tell you:" and he went off. On the next Saturday, my security came to me, and told me that I was to appear in the Court, and said he never understood that he was to produce me to the Court; but that the centenier had been to him, and told him he was also obliged to produce me in Court, as he was going to enter a Report against me. So I appeared.

715. You were brought before the Court?—Yes; I did not know what for.

716. Did not they tell you what it was for, when you were in Court?—It was not presented; so that I was brought up another day: and, as it was not presented on the second day, coming out of court, I asked centenier Duparcq when I was to appear again: and he answered me, in an angry tone, "I have no reason to give you," and went off. I was obliged therefore to enter a remonstrance.

717. Is that a civil action?—Both civil and criminal.

718. Is that pending now?—Yes. The constable himself, who is an advocate, also pleads the cause of my assailants. I have been seized for a twelvemonth, and imprisoned; that is I have been under security, and am not able to leave the island, not knowing the moment when the Report may be entered. I am under security to appear before the Court, to hear the Report entered against me; and, as the Report by law can be entered within twelve months, it runs on.

719. You have never been brought before the Court yet?—No. After a twelvemonth, when I asked centenier Duparcq to give me back my stick, the reason he gave me was, "Go and ask Mr. Chevalier; he has got it; I have given it to him." I said, "the stick, which you thought dangerous in the hands of the person assailed, you take from him, and give into the hands of his assailants." He said, again, he had no reason to give me. Mr. Duparcq is called in my private law-suit as a witness, who has taken an active part.

720. Your security is now discharged by lapse of time?—Yes: but I have suffered a great deal, through not being able to go out of the island.

721. In point of fact they kept you under surety to appear before the Court for a whole year?—Yes: and for that I have no redress, except by civil action against the centenier: and I would be ruined before I could get justice against a body of men like the Police, with a public fund at their disposal.

722. (To Mr. *Le Breton.*) What was your reason for not authorizing a prosecution in this case?—I considered that Mr. Romeril was the party aggrieved, and that it was absurd that the party who had been violently assaulted should be prosecuted, instead of those who had committed the assault.

723. You had no power, unless it came to an accusation, to discharge him?—Bail was taken, without its being communicated to me.

724. Did you afterwards know the fact of this gentleman being held under security in this way?—The moment I refused to enter a prosecution, I considered that the centenier would immediately liberate the bail, as he knew that no proceeding would follow upon it.

725. It rests with him to liberate it, does it?—With the officer who had taken it.

726. Is that so, that no proceedings against the Police could have been commenced by Mr. Romeril for want of there being an information?—I consider that Mr. Romeril might have instituted proceedings against centenier Duparcq, who had arrested him, if he had been so advised.

727. Criminal proceedings?—Not criminal proceedings.

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Mr. Charles Romeril. 8 September, 1846.

728. So that, for want of an information of the constable here, no criminal proceedings, strictly so called, could be instituted: that is to say, you could not prosecute as Attorney General for want of the constable's information.—I might have done so *ex officio*; but, Mr. Romeril having applied to the Court, by a cause en ajonction, for a fine to the Crown and damages to himself, the reason was gone.

729. In fact, Mr. Romeril was driven to the proceeding en ajonction to obtain justice?—Yes. When Mr. Romeril applied to me late in the evening (I think it was between nine and ten o'clock), I immediately referred him to the Police, and told him the complaint ought to be addressed to the Police. He told me that he would apply to the Police though he did not expect any redress from them. Upon that, I told him it was his duty to apply to the Police in the first instance.

730. Mr. *Romeril.* Perhaps I may observe that one of my assailants has been since made a police officer himself.

Mr. Richard Duparcq.

Mr. *Richard Duparcq* examined.

731. You are centenier of St. Héliers?—Yes, of St. Hélier's parish.

732. Will you tell us your version of this story?—In August, 1845, I met Mr. Henry Manuel, a police officer, who told me, Mr. Romeril had threatened to have the life of the young Chevaliers. While we were in the square, he passed with a stick: he said, "There is Mr. Romeril with a stick." I went up to Mr Romeril, and told him, "Mr. Romeril, will you show me your stick?" He said, "Yes." In handling the stick, I saw it had sixteen or eighteen points; and I told him, "This is a very dangerous stick." And he told me it was to defend himself. I told him, "Mr. Romeril, I shall keep this stick; for I have been told, by Mr. Manuel, you have threatened to have the life of the young Chevaliers." I told Mr. Romeril that I was obliged to bind him to keep the peace towards the young Chevaliers and Mr. Chevalier's family. He told me that I ought to have gone to the Messieurs Chevalier, and not to him; and he asked me to go, which I did, in company with Mr. Manuel, immediately afterwards.

733. Had you received any formal complaint from the young Messieurs Chevalier?—No: but I had heard from Mr. Manuel that he could bring witnesses that Mr. Romeril had threatened the life of the young Chevaliers.

734. Did you go to the Chevaliers?—I did. After that, I met Captain Chevalier, the father of the young Chevaliers, who told me, the same as Mr. Manuel, that Mr. Romeril had threatened the life of his sons.

735. You told Mr. Romeril you had had this account given to you?—I did, in the presence of Mr. Manuel. I met Mr. Chevalier, the centenier, in the square; and we went up to the Attorney General, and told him what had passed, and asked him his advice, how I was to act towards Mr. Romeril. He told me he was to be seized or to give security: he told me so in the presence of centenier Chevalier. In the evening, I met Mr. Romeril. I had spoken to the constable Mr. Le Sueur about it in his office; and he told me I must try and see Mr. Romeril, and get him to give security; and, if he did not give me security, to put him in gaol.

736. Had any body told you he had heard Mr. Romeril offer those threats?—Yes: Mr. Manuel did. He told me that some one had told him (I believe it was his father) that he had heard Mr. Romeril say so.

737. Did you see Mr. Manuel's father?—No; but I put the question to Mr. Romeril in the evening. I asked him to give me bail; which he said he could do.

738. Are you in the habit of requiring bail, when the only evidence you have of a threat is that somebody says that somebody had told him he had heard of the threat?—That never happened to me before.

739. Do you act upon the information, not of a person who has seen the crime, but of somebody who has been told that the crime has been committed?—Yes. Mr. Manuel told me there was sufficient proof: he is a police officer.

740. Mr. Manuel, the police officer, told you that his father had told him that Mr. Romeril had threatened the lives of the young Chevaliers?—Yes.

741. And, upon that, you thought it your duty to take bail of him?—Yes.

742. Would you generally act upon information of that kind?—Yes; I told Mr. Romeril of it in the evening: and he said, he might have said so in conversation.

743. I understood you to say that Mr. Romeril had told you the two young Chevaliers had committed an assault upon him, and asked you to take bail of them.—He did not.

744. Did you take any security of Messieurs Chevalier?—No, I did not.

745. Do you wish to add anything further?—I think I ought to say this, as to Mr. Romeril. When I told him he must find bail, he told me he would go to Mr. Charles Hewet at once. I went to him. Mr. Charles Hewet was there, and Mr. Edward Seaward; and Mr. Hewet said, "No: I understand you carry pistols in your pocket; I will not be security for you." We went again to Mr. Du Jardin: he was not at home: and then we went to another.

746. After taking security, on understanding from the Attorney General that it is not a case that he thinks proper to prosecute, is not it usual to liberate the bail immediately?—I ought to have done it; but I thought, when the Attorney General refused to enter the Report on Saturday, it was done with. I never thought any more about it.

747. Did not you say, "Je n'ai pas de raisons à vous donner?"—Yes; I did say that in August last. Mr. Romeril asked me for a stick; I told him to go to Mr. Chevalier.

748. Mr Romeril says that, on Saturday, the next Court day, he was in attendance at the Court, expecting you would prefer a complaint.—I gave it to the Attorney General; but he would not enter the Report.

749. On the succeeding Saturday, Mr. Romeril came again, expecting you would prefer your Report, and asked you why you did not prefer your report: you said "I have no reason to give you."—Perhaps I might have done so. I do not exactly recollect what passed: it is a year ago.

750. Why did not you say to him, "The Attorney General does not intend to proceed, and your bail is now at liberty?"—I did not say that.

751. It did not occur to you to say so?—No.

752. Of course, if it had come into your mind, you would have said so?—I would. I had nothing against Mr. Romeril personally.

753. Is the bail a written instrument?—No; it is merely by words.

754. It is entered, in point of fact, in your Report?—I do not believe it is mentioned in the Report that there was bail for Mr. Romeril. It is in the possession of the Attorney General now. It was given to him; and I have never had it again. I have a copy of it, and can produce it.

755. Had Mr. Romeril marks of blows the next morning when you saw him?—I could see that Mr. Romeril had a black eye: that was all that I saw.

756. While you were away, some evidence was given by Mr. Le Cras, concerning some complaint of his. [The evidence of Mr. Le Cras was read to the witness.]—On receiving the letter of Mr. Le Cras, I went with the party to Mr. Seaward; but he was not at home. I also went again with my son, who was a police officer.

757. You did not find him at home?—No.

758. Neither time?—No.

759. Were those two inquiries both made on the same day?—No. I believe the other inquiry was to know if I had bound Mr. Seaward to keep the peace, and to what amount.

760. On going to look after Mr. Seaward, you did not find him at home: were they both the same day?—Yes, in the afternoon: once before two, and the other after two o'clock.

761. You did not return any answer in writing to Mr. Le Cras?—No; I did not think it was necessary.

762. Did you have any conversation with him afterwards about it?—Never. I have never spoken a word to him since that time, nor for a long time before.

763. Was your only reason for not taking this security not finding Mr. Seaward at home?—That was my only reason. If I had, I would have done it, as it was my duty to do.

764. You did not make any subsequent enquiry?—No. I was called away, after that, on another police business; and I was told, the next day, Mr. Le Cras was going to enter an action against Mr. Seaward.

765. How far have you to go to Mr. Seaward's?—About four or five hundred yards.

766. Is Mr. Seaward an acquaintance or friend of yours?—No.

767. What is your business?—I am a wine and spirit merchant.

768. Mr. *Le Cras.* Mr. Seaward keeps a public house.

769. (To Mr. *Duparcq.*) He does not deal with you, I suppose.—No.

770. Has he ever dealt with you?—Never, to my knowledge.

771. How soon after receiving Mr. Le Cras's letter did you go to Mr. Seaward?—Immediately: the first time it was a few minutes before two.

772. Mr. *Le Cras.* My letter was sent at half past ten.

773. Mr. *Duparcq.* I did not receive the letter till a few minutes before two.

774. Had you been from home that morning?—No: I had not, to my knowledge. The second letter I cannot tell when I received, whether it was in the morning or in the afternoon.

775. Did you receive a second letter the same day?—Yes.

776. The first you received a little before two?—Yes, to go down and bind Mr. Seaward to keep the peace towards Mr. Le Cras.

777. I suppose these complaints are a source of great inconvenience to a gentleman so much engaged in business as yourself?—I was not engaged in business then.

778. Is there anything which you wish to add upon this subject?—Nothing else.

779. Mr. *Le Breton.* I recollect that Mr. Duparcq spoke to me several times, with respect to Mr. Romeril, that he had threatened the life of the young Chevaliers. I told him I saw no danger in it, and that it would be absurd that a person who had been so ill treated as Mr. Romeril should be put in gaol, for a threat of that kind, when an assault had not been witnessed by the Police. He was extremely pressing that I should give him directions to arrest Mr. Romeril. I ought to say that he spoke to me several times. He came afterwards, accompanied by Mr. Chevalier, the father of those two young men, and showed me a stick which had iron spikes in it. Mr. Chevalier did all he could to induce me to direct the arrest of Mr. Romeril. I told him that his sons were concerned, and that it was not proper for him to interfere in the matter. Both he and Mr. Duparcq told me there would be a murder committed; and, from the length of time, I cannot exactly state whether they said it would be my fault, or that I should be the cause, if Mr. Romeril was not arrested; but I have that impression. I told them, if they considered that a murder was to be committed, they might on their own responsibility take such measures to prevent it as, on consulting with the constable, they might think necessary, but that I had no apprehension of that kind myself.

780. They would not want your authority, merely for the purpose of taking bail? The practice is to do it upon their own discretion?—Very often: sometimes they consult me.

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Mr. Richard Duparcq.

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781. But, on your giving an opinion to the contrary, they would have the power of doing so on their own responsibility?—Yes, till the matter comes before the Court. I could have no means of compelling them to refuse bail, except expressing my opinion.

782. Your account of the transaction does not quite agree with Mr. Duparcq's.—No.

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Mr. David Bromer.

Mr. *David Bromer* examined.

783. Are you a resident in St. Héliers?—I am the eldest son of a lady who has a property of £500 a year. I have been in the island fifteen or sixteen years, more or less; but my mother's address is at Gibraltar.

784. At present you are staying here?—I am a landed proprietor.

785. Where do you reside?—In St. Héliers.

786. Have you any complaint to make of the non-interference of the police: and will you be kind enough to state the facts?—I am not positively prepared as to dates, not knowing, when I came into Court, that there would be a private examination of individuals: but, as the documents remain in the hands of the Police, they can be added afterwards. The first complaint I have to make is this. The limitation of an acceptance of a bill here is ten years.

787. You mean to say that no action can be brought upon a bill of exchange after ten years?—No. Within that period, I sent a bill, which I received from Advocate Godfray's office, by order of Mr. Brown of St. Saviour's, for payment to a person of the name of Milard, in Halkett place.

788. It was drawn on, or accepted by, Milard?—Yes; I do not know; but the document is still in the hands of the Police. When Mr. Dupont, whom I sent to present the bill, arrived at Milard's, the bill was destroyed by Milard and his wife. I applied to the police, and had the usual difficulty in finding one.

789. You went after several before you found one?—Yes. I invariably do so.

790. And you did so upon this occasion?—Yes. I met Mr. Manuel at Mr. Falle's shop in the square, and sent him to seize Milard and his wife.

791. You told him, of course, those facts?—Yes. The next day, I applied at Advocate Le Sueur's office, and saw part of the torn document: and he asked me if it was the same. It was pasted together, which he told me had been done by themselves, as a security. I left the office, and applied to the deputy Vicomte (Judge Le Gallais now), and asked him (as on many occasions he has been most courteous in giving me advice) what course I was to pursue.

792. Did you ascertain from Mr. Le Sueur whether they had arrested the party?—I ascertained that they had seized the parties, and taken bail, and that he had recovered two thirds of the torn document. I applied to Mr. Le Gallais, not being confident whether it was a criminal case or not; and, from political reasons, not being friendly with the Police, I wished to hold as little communication with them at all times as possible, belonging to the opposite party. The deputy Vicomte told me that, they having taken forcible possession of the security, it was a criminal matter, and the only way they could meet it was at once to pay the bill; that it was not a civil action, because, the security having been torn, it was a criminal affair.

793. He could not act as an attorney, because the only persons who could act were the Procureur Général and the Police?—Yes. I then accompanied Advocate Le Sueur to the Procureur Général's office, when the Procureur Général advised a settlement. Being a good deal irritated at the language which I heard that Milard had used towards myself, stating that I had found the bill, I stated to the Procureur Général that I would not place myself in a position that other people had been placed in, to be accused of compromising felonies; when I was requested to leave the room. As I left the room, the constable of St. Héliers remained behind for about two minutes. When he came out of the Procureur Général's room, he asked me if I would accompany him to Mr. Le Ber, the agent in the square. When there, Mr. Le Ber stated that it was a melancholy affair, for Mrs. Milard had given this bill in the first instance unknown to her husband; that he would give me 10*s.* in the pound for her. I reiterated my former statement to the Procureur Général. I stated I did not compromise felonies; and I requested the constable to do his duty. Week after week, I applied to the constable, who told me that he had sent his report to the Procureur Général, and the case would be presented from Saturday to Saturday; and I danced attendance on several occasions. I complained to the Police subsequently, and stated that I had been extremely ill used by them. The answer I received, in the presence of Judges, whom I will not name, was that Milard had been mixed up in a pistol transaction with the Procureur Général, and he could do nothing more for me: and, from that day to this, I have been robbed of the security. I have not received one shilling.

794. By whom were you told this?—By parties in authority.

795. Filling what office?—It was said by the Police generally. It was in Mr. Falle's shop it was told me. Whatever may be the reason, I have lost the security.

796. The security is, of course, in the hands of the constable and the Police?—I believe so. I have not seen it since.

797. What is the amount?—It may be 25*l.* or 35*l.*; I am not sure which.

798. Are you in any business here?—I have been fourteen months in prison, having been arrested as the drawer of bills, dated here, and accepted payable eight months afterwards in London, for which the acceptor had given collateral security, because I could not produce security that the acceptor would pay them when at maturity here. After fourteen months I was liberated. I denied the debt, and successfully resisted it.

799. Upon some civil process you have been imprisoned?—The only process was, that I was

arrested without the slightest security. Judge Nicolle arrested me, in the name of Mr. Bertram, to whom I had never owed a shilling in my life.

800. (To Mr. *Le Gallais*). Is not it a question of a good deal of difficulty, whether that is a felony or not?—The bill was drawn, I believe, by the woman.

801. You may be aware that, whether the tearing be *animo furandi*, is a question upon which there are solemn decisions both ways in England?—The security being destroyed, I considered I could not interfere.

802. Did you consider that the destruction of the bill was a felonious appropriation of the bill?—I considered it was done with the view of defrauding the holder of the bill of the amount.

803. (To Mr. *Le Breton.*) Do you recollect this circumstance?—I do. It is two or three years ago, I think. Of course I may not recollect perfectly every thing that passed.

804. Do you recollect the meeting between Mr. Bromer and Mr. Le Sueur, at your office?—Yes. There appeared to be very great difficulty in the matter. Mr. Le Sueur is a person who can give the Commissioners greater details than I can do. The bill, I believe, was overdue; it was what we call *périmé;* it was signed by the wife of Mr. Milard. As far as I can now recollect, from the information which was conveyed to me by Mr. Le Sueur and other persons, the fact of having destroyed the bill appeared to be very doubtful. Whether the bill was received by Milard and his wife, or by his wife alone, I do not exactly recollect. Their statement was, that a person, whom they did not know, presented the bill, and that, being overdue, and the person refusing to give any information by whom he was sent, or whose bill it was, they took hold of the bill, to keep it till they found out whose it was; and that, in taking it, it was torn in two. I do not know whether it was a bill, or a note of hand, The bill was delivered up to Mr. Le Sueur; and, after a considerable time, and having seen Mr. Le Sueur upon the subject at different periods,—

805. Officially, as constable?—Yes:—we were both, I believe, of opinion that it was not a case to found a criminal prosecution upon, but that the bill should be given up to Mr. Bromer, to sue for it, if it was of any value. Mr. Cromer having said that he was desired to leave the room, I may state that it was in consequence of the most abusive language, which he had used on that occasion, telling me that if I chose to compromise felonies he would not do it. Mr. Bromer spoke to me several times in the street upon the subject, and always in the most insulting manner; and finally he complained to the Lieutenant Governor upon the subject. I do not know whether he did not also complain to the Secretary of State. I saw the letter addressed by Mr. Bromer, which was in such terms as the Lieutenant Governor did not consider even respectful to himself. I believe Mr. Le Sueur repeatedly offered the bill to Mr. Bromer.

806. You know that from hearsay?—Mr. Cromer acknowledged to me that Mr. Le Sueur had offered the bill, but that he would not take it.

807. Where?—In the square. The fact is, that Mr. Bromer annoyed me so repeatedly and so constantly, and was always in such a state of irritation, that it is very probable he may not recollect what he said on those occasions.

808. The bill is still in the custody of the Police, I suppose, and Mr. Bromer could have the bill any day by making the proper application?—He might have had it then: and I suppose he might have it still. The bill has never been in my custody.

809. You thought, taking the whole of the circumstances into consideration, it was not a fair case for a criminal prosecution?—No.

810. You stated that you were informed, by Mr. Le Sueur and other persons, of the circumstances. Were you informed by people in office, and did you receive that information as a public officer, and where?—I cannot say, from the length of time, where, or from whom. I beg to be allowed to add, with respect to that part of Mr. Bromer's statement, that he was told that Mr. Milard had had a pistol affair with me, and that it was useless to talk of the matter further; that, 26 years ago, before I was Attorney General, I had the misfortune to be concerned in a duel with another gentleman, who was the aggressor, and whom I fought, and unfortunately wounded. Some time after the duel, a report was circulated that the pistols I had used were rifle pistols, and unfair. An investigation took place, before the Lieutenant Governor and a board of officers; and the result was, that the charge was found groundless, and the gentleman who maintained the charge was dismissed from the regiment. On the investigation, Mr. Milard and his father, who were gunsmiths at the time, and whom I employed, pretended that I knew that the pistols were unfair, for in the bills they had delivered me they had marked them as rifles, and shewed their books to that effect. I produced their own bill, which did not contain that word; and, on an inspection of their books, it was found that it had been interlined. Therefore I could have no feeling of friendship or partiality for Mr. Milard.

811. Mr. *Dupré.* I can confirm that from personal knowledge, having been present at the investigation.

812. Mr. *Bromer.* It has been stated that I applied to the Lieutenant Governor. That was subsequent to the expiration of the twelvemonths, when my chance of justice here was barred. The object for which I state this case is to shew, that the Attorney General has the power to quash any proceedings as he thinks fit.

813. It is upon his discretion that he does so?—If it is a secret discretion, and I am told that my case will be presented from Saturday to Saturday, when the party who issues those summonses knows that, from the quantity upon the list, it is impossible for the case to be heard, and yet, if we are absent, we are mulcted in the expenses of the day, it is very important that that should be known at once.

814. Mr. *Le Breton.*—Mr. Bromer's presence was not necessary till the Report was presented; neither had he then, nor would he at any subsequent stage of the proceedings, have incurred a single penny of expense.

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815. (To Mr. *Le Sueur.*) The Commissioners understand that it was stated to Mr. Bromer that the authorities did not consider this a criminal charge, and that he might have his bill again, for the purpose of pursuing a civil remedy?—Certainly.

816. Was that communication made early in the course of the proceedings?—I know very well that, shortly after the affair took place in Mr. Milard's shop, I went to Mr. Milard's, and saw his wife; and she told me that she was very much surprised when this bill was shewn to her; and I think she went to shew it to her husband. Whether he was in the back shop, or out of the house, I do not recollect. However, the bill was then torn. She asked the young man who brought the bill, who confirmed that he refused to mention the name; and it appeared that the bill had been drawn on the man under some rather unpleasant circumstances. She was very much annoyed at it; so that she thought she would keep the bill, or part of the bill, till she knew who had sent the young man.

817. The point which the Commissioners wish to come to is, whether the fact is that you, as the legal officer of the parish, were of opinion that that was not a ground for shaping a criminal charge.—I thought there was no foundation whatever for a criminal action; but, at the same time, I took a few notes for the purpose of making a Report in Court, if the Attorney General thought that it ought to be brought in as a criminal action. At the same time, I saw Mr. Le Breton in the presence of Mr. Bromer; and I think that Mr. Milard, on one occasion, was called. There was a sort of investigation into the case; and we were both of opinion that no criminal action could be brought forward.

818. That was communicated to Mr. Bromer?—Yes: and I told him, "you may go to the office, and get your note." For a long time I thought the note had been given back to Mr. Bromer; and so it may have been: but, perhaps a year or eighteen months after the affair, Mr Bromer came to me and asked for the note. I thought he had had the note: and I am disposed to think he has; however, he says, he has not: but I told him, at the time, if he called at the office, he would have his note immediately.

819. (To Mr. *Bromer.*) Is there any other case which you wish to mention to the Commissioners?—Within the last six months, a man in my employ, of the name of Thomas, who also is owner of a fly-van on his own account, in following his occupation, happened to pass by the pier. Seeing a steam boat, he offered to bring up some luggage, Mr. Chevalier met him, and asked him for half a crown.

820. Were you by?—No; but I can prove it in one instant. I applied at Thomas's house, to find him, and was told by his wife that he was in prison for half a crown. I applied at Mr. Godfray's office, the denunciateur; but he had left town. The next day, I accompanied Mr. Godfray to the prison, where I found that this man Thomas had been detained from three o'clock the preceding day to 11 o'clock the next day, without any magistrate's order whatever; that money to the amount of two pounds odd had been taken from him, which he has not yet recovered, and his keys; and that he had been liberated without knowing what the charge was against him. I have known instances of a criminal being detained ten or twelve days in prison, and then not presented at all, but discharged at the option of the police. Subsequently, in my presence, this man was seized again in Halkett Place, and presented to the Court; and then he was charged with having infringed a law whereby he had incurred a penalty of half a crown; when the Procureur Général decided that there was no such law in existence, and he was dismissed. I have since applied to Mr. Godfray, to bring an action against the centenier for the detention of this man's money, the two pounds odd, which he has not recovered to this day, and which was taken from him in prison without any magistrate's sanction whatever. I have, however, come to the determination, which his friends did, that, as the Court is now constituted, with party Judges, and that party being in power, it would be impossible, and I conscientiously believe it, to get a verdict. If it is by civil process, it would incur an expense of 15*l.* or 20*l.* There is a kind of sliding scale in the Court, by which, if an ordinary individual's word passes for one, a centenier's word passes for two, and a Judge's word for more than two.

821. (To Mr. *Le Breton.*) Is there any such law or practice?—Certainly not.

822. Mr. *Bromer.* Immediately upon this, I addressed the Secretary of State, who sent an order that no person should be put in prison without a magistrate's order. To evade that, the police now put them into the mad cells in the hospital, where they detain them for days.

823. (To the *Vicomte.*) Is there any such order of the Secretary of State?—I am not aware of any.

824. You are superintendent of the prison board?—Yes.

825. Mr. *Bromer.* I have a letter from Mr. Gardiner, stating that such an order had been received.

826. (To the *Greffier.*) Has any such order been registered?—No.

827. Who is it with whom it would rest to restore property taken from a person charged with an offence?

828. The *Vicomte.* No doubt with the Attorney General.

829. Mr. *Le Breton.* No; by no means.

830. Mr. *Philippe W. Nicolle.* I should think it would rest with the Vicomte.

831. (To Mr. *Le Sueur.*) Supposing the Police, of which you are the head, were to take up a party, and it was thought proper to take charge of what money was upon him, in that case, if the prisoner is released, and the money turns out to be his, who is the proper authority to interfere to direct restitution to be made?—The money is never taken by the Police from a person taken to gaol, unless it may be useful for the purposes of the charge. By the prison regulations, the gaoler must take whatever money is found upon the prisoner, and must take care of it. It is in the custody of the gaoler, but not of the Police.

832. My question is rather as to the time that elapses before the person is placed in gaol. There

may be forty eight hours, sometimes, before a person who is apprehended comes before the magitrate who sends him to prison. In that interval, any article which it was thought important to detain would be in the hands of the Police, I suppose.—Yes.

833. Supposing it turns out that it is not a case in which the magistrate chooses to have him sent to gaol, and therefore the gaol regulations never come into force at all, who is the officer with whom it would rest to direct restitution of the property to the party charged?—The party applies to the police officer who has taken him up; and, if he refuse, he would apply to the constable. If he refuse, the party might apply to the Attorney General.

834. Has the Attorney General any power to compel the officer to return an article which has been seized from a person?—I never knew an article which was withheld after the prosecution. I never knew an instance of an officer refusing to return an article after I had desired him to do so.

835. Mr. *Bromer.* It may frequently be a great object with the Police to retain in their hands the sum of money deposited with them in such a way. It may be useful to them in their business. The Police, like other people, may be in straightened circumstances.

836. (To Mr. *Le Breton*). Does the bail take place by an actual deposit of money?—Not always; I believe very rarely. Generally, some landed proprietor becomes bail. Mr. Le Sueur can answer that question better than I can: but, generally speaking, the name of the bail is put in the Report. I do not recollect ever having seen a Report of the Police in which the officer has stated that the sum of money had been deposited in his hands.

837. Mr. *Le Sueur.* Mr. Bromer has stated that the Police may have an interest in keeping the money which is deposited in their hands, because they may be straightened in their circumstances. I must say that I am not aware, though I have been for the last seven years constable of St. Héliers, that any money has ever been deposited in the hands of the Police in lieu of personal bail. It may have occurred; but I do not recollect such a thing taking place.

838. Can it be so legally?—Certainly. The money may be placed in the hands of the constable or one of the centeniers.

839. The *Vicomte.* It might occur where the individual was not known here.

840. Do not the Cour Royale, when they take bail, require either the bail of a landed proprietor or a deposit of money?—Yes.

841. Mr. *Philippe W. Nicolle.* During the whole of the time I have been centenier of St. Hélier, it has never come to my knowledge to have exacted money from any individual. I have taken bail from landed proprietors, and taken their word that they would be bail for the appearance of the parties, and their keeping the peace during a certain time. The bail is taken from the landed proprietor; and, if the party could not produce a landed proprietor, the money was lodged in the hands of one of the parties.

842. (To Mr. *Romeril*). In your case, the party did not deposit the money?—No; but the article which was taken from me, the stick, is now detained.

843. (To Mr. *Bromer.*). Is there any other case which you wish to state to the Commissioners?—I acted as reporter, at an adjourned inquest on a person of the name of Charles Popal. He was killed in a scuffle with two men of the name of Molloy and Burke, at a brothel, at an unseasonable hour.

844. When was this?—About three years ago.

845. Were you present at the inquest?—Yes, at the whole of it. The inquest was adjourned till a second day, when it was held in the prison, with closed doors, and there concluded. The whole of the witnesses are heard before the Jury, *vivâ voce;* but no deposition is taken upon oath. At the conclusion of this inquest, after the verdict, which affected the life or death of two individuals, remarks were made upon the indifferent evidence of one girl, whose name I forget.

846. By whom?—By the officers present. And yet, upon this testimony, the enditement was framed, which tried those two men for murder.

847. The coroner's inquest found a verdict of wilful murder, upon which the parties were tried for murder, and found guilty of manslaughter?—Yes.

848. What you complain of is that, inasmuch as the witnesses are not sworn, a man is lightly put on his trial, and that the want of an oath prevents the witnesses speaking as carefully as they otherwise would?—I presume to suggest that many of those indictments are framed, by which, more or less, a man or a woman may have their future prospects blasted by a false charge of murder being brought against them. Upon that I beg to direct the Commissioners to the fact that the evidence should be taken carefully, that men should not be charged with offences which they never committed.

849. The usual mode of proceeding in the island the Commissioners understand to be that the evidence of witnesses before the coroner's inquest is not given upon oath: that the verdict of the coroner's inquest is afterwards recorded in Court; and that the party is then tried. Before he can be criminally indited, the evidence must be given upon oath?—The police jury having found Mrs. Le Gendre guilty, and the grand jury having acquitted her subsequently, caused a certain individual or individuals to placard the whole of the names of that jury about the town, to heap odium and disgrace upon them: and, while from party principles men are liable to that (and it could be easily traced, and I believe sprang from official sources), it is very dangerous for a party here to run the risk of a trial for life or death. That was done: the names were placarded; and they were torn down and replaced.

850. The coroner's inquest does not place the party in a worse situation than he would be without it?—It places him in the position of being charged for murder, when, if the case went before the magistrate or any one competent to examine the parties on oath, it would prevent his being charged for murder, he having only committed manslaughter.

851. Have you any further suggestion to offer?—I have only to refer the Commis-

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sioners to the circumstance, which I have mentioned, the placarding the names of the grand jury when they differ from the inferior jury. That must be with the knowledge of the authorities.

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John Hammond, Esq.

*John Hammond, Esq.*, further examined.

852. You wish to express your opinion upon some points given in evidence yesterday?—The point upon which Mr. Dupré, and afterwards Mr. Godfray, spoke, was with reference to the two juries in our criminal procedure. As far as my experience goes, I would consider, assuming that a previous examination took place before committal, that the first jury, called the enditement, is quite superfluous, and I think injurious to the proper administration of criminal justice.

853. When you say a previous examination, you mean a previous examination on oath?—Yes. For the ends of justice generally, I am speaking, and also in fairness to those who have to declare and give a verdict respecting the person charged. In the present instance (that is as regards the evidence), as the Commissioners are aware, those who have to pronounce upon the accusation never see any of the witnesses.

854. You would not only have the depositions taken on oath, but also the witnesses called in person?—Yes, before the Court, so as to be present when the jury is assembled, and with the right on the part of the members of the jury to question, or cause such questions to be put as the examination that is then passing before them may suggest.

855. Do you agree with Mr. Godfray's opinion, that the grande enquête, or whatever you may call the final jury, would be more prejudiced against a person by knowing the fact that a magistrate had thought it a fit case for trial, than that a previous jury had thought the man guilty?—No: I do not see that that would affect their judgment. I think it would be a disadvantage, if the magistrate were to sit again in judgment; but I do not think that his having heard evidence and decided as to whether there should or should not be a trial would affect the decision of those gentlemen composing the grande enquête, or the final jury.

856. What do you think as to the effect, in the present case, of the final jury knowing that a previous jury has heard both sides, and found the man Guilty? Has that any effect upon their minds, in your opinion?—I do not know whether it has much: but I think, oftentimes, the two juries are put in a very invidious position, as regards each other, more or less, from the fact that they may render different verdicts: and, after all, they do so upon the same evidence. But persons do not take into consideration that in one case it is a mere majority, in the other it requires twenty out of twenty four: but, both being recorded, it is rather an anomaly, I consider, in our criminal procedure.

857. You are aware that, according to the ordinary system, as it prevails in England, the evidence that is given *vivâ voce* is taken down in writing by the Judge, and read, if the jury desire it, either in part or all through, as they please?—The Judge takes down the evidence.

858. That is added to the fact of their seeing the witness?—Yes; which is, of course, very important and essential.

859. You were saying, there would be a discrepancy in the verdict, in case of a person being found Guilty by the enditement and being acquitted by the grande enquête. The verdict of the enditement is recorded?—It is.

860. Supposing a prisoner to be found Guilty by the enditement, and afterwards acquitted by the grande enquête, would not the facts stand in this way:—out of a jury of thirteen seven find him Guilty, and out of a jury of twenty four five find him innocent?—Yes.

861. Would not the result of that be, upon the record of the Court, that a greater number found him Guilty, and yet the man is acquitted?—Yes.

862. Supposing the jury to be equally impartial, and equally capable of discharging the functions of jurymen?—Yes.

863. So that a person, looking to the record, would find that, notwithstanding the acquittal, the majority had thought him Guilty?—It might be so; it is not necessarily recorded; but that is one of the great contradictions which are to be remarked in our system.

864. Five might find him innocent out of twenty four, and seven find him guilty out of thirteen?—Yes. In the first judgment, there might be six to declare a man innocent, and yet he might be hanged upon that judgment, if he did not appeal. It appears to me that it is very much to be deprecated, having two verdicts under such circumstances.

865. Does that strike you as an objection to the proceedings before the enditement?—I think the recording of both, which is necessary in the present mode of proceeding, is a very great objection. I consider, if the rolls of our Criminal Court were perfect, they would only record those who were guilty persons; but here there might be a person declared Not guilty, and yet there stands for ever in the record, without the possibility of erasing it, a declaration of his being guilty. It is true you might find another Acte, if you chose to go on looking into the Court Rolls; but it is not less true, that there it remains.

866. Might not the observation just made be made by anybody on seeing the two Acts?—It might.

887. And it might be thrown in the teeth of an individual?—It might.

888 Does it strike you as an objection to the enditement, that it is composed of the Police?—I consider that a decided disadvantage, for this reason: that, although the constable, or other police officer, who has either arrested the individual or assisted in the arrest of the individual, will not be a juryman, because in all probability he will be heard as a witness to state the facts which have come to his knowledge, still it is scarcely possible but that some of those who have been so employed must necessarily have had some communication with their fellow police officers

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from the necessity of the thing; and therefore their minds, before they come as jurymen, are perhaps pre-engaged with the representations or circumstances which have been told them out of Court; and the evidence on oath cannot altogether destroy the impression. I think it could scarcely be expected to destroy altogether the impressions which had been made by those communications which they had heard. I can scarcely quote a case, unless one of very minor importance, in which the members of the Police could abstain from making remarks upon the case among themselves, being in the habit of meeting much more frequently perhaps than other persons, and also having the knowledge that they are to be judges, not being like the grande enquête, who are only called the night before, and consequently do not know that they will necessarily be the judges to decide and give a verdict upon the case.

869. Does not the constable elect such of the Police as he chooses to constitute the enditement?—Yes. He gets an order from the Procureur Général to state, you are to appear in Court to preside, and to have the necessary persons to compose that enditement.

870. Does it also strike you as an objection to the enditement, that the constable should have the right of selecting what police officers he chooses to compose the enditement?—If the enditement is retained, I think that is of very little moment, because he has to select but from a comparatively small number, and very often that number is very much curtailed, from the fact that many may be required as witnesses.

871. You are assuming, now, that, if the enditement is retained, you also would retain that feature which relates to its constitution by the Police?—Yes. I am arguing upon it as it is at present. But, even assuming that it were not composed of the members of the Police, but that thirteen men were chosen indifferently, and perhaps in the same mode as the jury of appeal, still I think it would not at all tend to the ends of justice.

872. Supposing the enditement and the grande enquête to be selected upon the same principle, do you see the advantage of there being two juries?—I do not see the advantage of the two juries.

873. That is, not two juries to try the guilt or innocence of the prisoners?—That is what I mean: a jury before committal would be quite a different thing. Either a jury, or a magistrate, a jury, I think, might be very beneficial in that way: but that would be upon another principle altogether.

784. Would not the argument in favour of two juries apply with equal force to three?—It appears to me that two juries who have to try the prisoner are a disadvantage; but I do not say that two juries would not be advantageous in this way, that is to say, if the first jury were to examine merely to commit, or to say whether a person should be tried or not. But the having two juries, upon whose verdict a man might receive sentence, I think is decidedly disadvantageous and detrimental.

875. Do any other objections to the proceeding by the enditement occur to you?—Nothing strikes my mind just now.

876. The Commissioners have heard evidence from some other gentlemen, that the Police are more or less a party body. Do you agree in that opinion of the Police?—I should say that the Police are more or less so: but it is right to say, not as a body throughout the island. They are not all of the same party: but I think they generally act as a body in different parishes.

877. Does that strike you as objectionable?—I think that certainly is an objection. It is decidedly disadvantageous in the case of persons who have to sit as a jury, and who know beforehand that they must alway be the jury in point of fact.

888. Does any remark occur to you upon the evidence that has been given?—I think our mode of rating now is decidedly objectionable.

879. You agree with what has been said by the Solicitor General upon that point?—Yes. I think it ought to be the property, and not the person, that ought to be rated. That has been a matter which has been often controverted and mooted between us; and I think the more the matter is considered, most persons will see that the advantage will be to rate the real property merely, and that the property should be appraised by independent persons: that is, persons should appraise in that part of the island where they had no interest; and then the property would be rated, and there would be no fear whatever of any kind of partiality arising from party or other motives, because the property would be rated, and it might fall into the hands of two or three persons in rotation, who might hold different opinions. I think it would be a most desirable thing.

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*Robert Pipon Marett, Esq. (Advocate)*, examined.

Robert P. Marett, Esq.

800. The Commissioners understand you wish to address some observations to them on the subject which has been before them?—It is particularly with respect to the two juries. It appears to me that, as matters now stand, the enditement is perfectly useless, because, no evidence whatever being taken before the grande enquête, the grande enquête is merely a jury of appeal.

881. You say the grande enquête is only a jury of appeal. I understand that fresh evidence is on some occasions introduced?—I am aware of one instance, in which I myself was concerned. I pleaded for a criminal before the enditement, and he was found Guilty: "plutôt coupable qu' innocent," was the form of the verdict. In the interval which elapsed between the trial before the enditement, and the trial before the grande enquête, I was informed that a person who had not been heard before the enditement was able to give evidence which was likely to be of service to the prisoner. I therefore notified to the Procureur Général that I was desirous of having this man called before the grande enquête; and, though the Procureur

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Général differed from me as to the power I had of so doing, he nevertheless consented to summon the individual.

882. He denied it as matter of right, but granted it as matter of favour.—He acted with the utmost impartiality. He ordered the man to be summoned; and he accordingly appeared before the Court. On his name being called, the Procureur Général objected to his evidence, stating that it was not usual, and that such a practice would lead to much inconvenience. I naturally endeavoured to support my view of the matter: and in so doing I quoted a passage out of Mr. Le Geyt's manuscripts, by which it appeared that, though it was not usual, yet still such a course had been occasionally followed. Upon this the Court, by a simple majority only (if I recollect rightly, they were not unanimous at any rate), decided that the witness should be heard; and he was accordingly examined. I believe that most of the other advocates differed from me in their view of this matter; but, having the opinion of Mr. Le Geyt, who is considered a great authority in this island, in my favour, and thinking besides it could never be too late on the score of humanity to bring evidence in favour of an individual, I determined to try the question; and in this case it was decided in my favour. But I believe that will be found to be the only instance which has occurred within probably the last fifty years: and therefore it can hardly be affirmed that witnesses are examined, or can be examined, before the grande enquête. Several of the Jurats were of a different opinion; and I believe a simple majority alone decided in my favour. And it is possible, if the question were tried on a future occasion, that judgment might be reversed.

883. Was the form of examining this new witness the same?—Exactly. The deposition was taken in writing.

884. The gentlemen who were to try the case heard him examined?—Yes; but the deposition was taken down in writing, and subsequently read to him. It was conducted in the same manner as before the enditement.

885. The enditement does not hear the witnesses?—No. It so happened that they were present; but, otherwise, the jury addressed no question to the prisoner. The examination was conducted in precisely the same manner, with this difference, that the jury were present: but this was altogether an accidental circumstance, as it were; and therefore it could not be considered as a variation from the practice.

886. If it were finally established that the right existed, the grande enquête would hardly be summoned till after the evidence was taken?—Exactly so; so much so that in this case I conceive the Procureur Général would have had the option of dismissing the grande enquête and calling other witnesses, in order to rebut the declaration of the witness produced by the prisoner. Therefore it appears to me to prove clearly that the presence of the grande enquête is not essential to the business, and that in every thing the examination was similar to that which might have taken place before the enditement. But this case may be considered unique.

887. You say it was possible, if the question were to arise again, that the decision might be reversed. Would the same Court reverse a decision to which they had solemnly come?—It might occur in this way, without accusing any gentleman of inconsistency in his opinion.

888. Might it happen that the decision of the Cour Royale might be reversed by the Cour Royale?—So far as that, I consider this would not be so entirely binding upon them as to oblige them to do it on a future occasion. There have been many cases in which judgments have been reversed. I mean that a judgment contradictory to a former judgment has been given.

889. The Commissioners hear that the precedents of the Court form the law of the Court. Would not this, having been established by the judgment of the Court, be the law of the Court?—Precedents, I think, cannot be considered as forming the law of the Court; but they form a certain rule by which they generally guide themselves; but they cannot be considered as an authority binding upon their consciences. If there have been three or four judgments of this kind, for instance, most of the Jurats, I believe, would consider that they were in some measure bound by these judgments as having been sanctioned by long practice, and by the experience of several persons: but I think that the Jurats would not be bound, and certainly they are not bound, to conform themselves to those decisions, if the reasons, which are subsequently produced to them, appear to them strong enough to overrule the precedent.

890. Would you understand the fresh decision to be in the nature of an overruling?—It would be in some measure overruling a previous judgment, that another decision would be given in direct contradiction to the former one.

891. Supposing this to take place, that there is a decision in favour of the hearing of a witness after the proceedings by the enditement are closed, such as you have mentioned, and, subsequently to that, there takes place a decision that witnesses should not be heard after the proceedings of the enditement are closed, what opinion would you give, as a lawyer, as to the law with regard to the hearing of fresh evidence before the grande enquête?—I would certainly consider the last judgment as preferable to the former one, as having more weight: but that would not prevent my trying the question again, because I consider that a judgment of this kind, founded upon no positive law, which it does not appear to be in this case, is not so far binding upon an advocate as to prevent his trying the question anew. But it is probable, if a judgment happened to be given by the great majority of the Court, or by their unanimous decision, the Judges would follow that. In this case, however, it was only the opinion of the majority; and therefore the question appeared to be doubtful.

892. Is there any entry, in the acts of the Court, as to the particular members of the Court who come to any decision?—It is always mentioned whether it is by a majority or not.

893. That is, by a simple majority or unanimously, or by a majority of two-thirds?—It is generally mentioned what the majority is.

894. Mr. *Dupré.* When the Court is unanimous, it is mentioned that it is so; when they are not unanimous, it is mentioned that the Court has ruled so and so.

895. *Vicomte.* And sometimes by a majority.

896. Mr. *Marett.* I believe I could show instances where the Court has said "par majorité," and sometimes "par balance de jurés."

897. Mr. *Dupré.* You will find more than one instance where a witness has been heard before the grande enquête, who was not heard before the enditement.

898. Mr. *Marett.* I did not affirm that as a fact. I said that, to my knowledge, I was not aware that any cases had taken place within the last fifty years.

899. (To Mr. *Marett.*) Supposing a decision had been come to by the unanimous opinion of the whole Court, would it then have been such a decision as would have been binding upon future Courts?—I consider it would then have very great weight; but I cannot state certainly that it is binding upon them: for I know no law or enactment which binds them to follow any such decision. By their oaths they are bound to give a decision according to their consciences. It may very well happen that a man may differ from another Jurat, who has given a judgment before him; but in a case of practice particularly, where a judgment has been given by the unanimous decision of the Court, it is generally held to be binding upon the Court.

900. The language we hold in England is, that it is evidence of the law, but not the law. A Judge, in over-ruling a precedent, does not imagine he is altering the law, but he says, I think they misunderstood the law, and the evidence, strong as it is, does not quite convince me in this particular case?—Those decisions serve as guides to the Judges who are called to try questions.

901. What you are saying would not apply to the particular instance before us: but you think that all questions which come before the Court would be questions which would be capable of being reviewed by another Court in the manner you have stated.

902. Mr. *Le Sueur.* A part of the Jurat's oath is that he will observe "les coutumes et usages."

903. Mr. *Marett.* I do not know how far a matter that has been established by one or two decisions could be called either "coutumes" or "usages." I am sure the judgments of the Court are not considered as binding, though they no doubt have a great influence upon the subsequent decisions of the Judges. I endeavour to use those expressions in as strict a sense as possible. By law I mean what is binding upon the decision and conscience of the individual; but I cannot consider any previous decision of any number of Jurats to be binding upon his conscience.

904. They would not form a strict rule of law, which they would be obliged to follow?—I cannot consider it so; and I believe I am borne out by the practice of the Court. It appears to me that the enditement was originally intended as a jury of examination, as in fact a substitute for a committing judge, but that, owing to changes which have taken place in the lapse of time, it has altogether deviated from its original purpose: from being a simple inquiry or a jury of inquiry or investigation into a crime, it has become a jury giving a recorded verdict. In my humble opinion, it appears that the use of two juries, giving both of them recorded verdicts, is of very questionable utility. Though I have examined the question with some attention, I have never yet been able to perceive that the advantage which resulted from the use of those two juries compensated for the loss of time which they occasioned. It appears to me that the grande enquête affords such immense advantages to a prisoner, from the circumstance of which the Commissioners are no doubt aware, that five of its members are sufficient to acquit a prisoner; that the prisoner has every possible guarantee of his acquittal, if really innocent. I think, then, that it would be useful to dispense with the enditement, at least in the stage of the business which it now occupies. Perhaps, if it were modified as to its composition, it might be usefully restored to the purposes which I believe it held formerly in criminal proceedings; by which I mean it might be used as a jury of examination, that a prisoner might be brought before this jury as soon as possible after his having been seized by the Police, that witnesses might then be examined *vivâ voce* before this jury upon oath, and upon both sides, both in favour of the prisoner, and in support of the charge, and their verdict, which it appears to me need not be recorded, but merely noted and authenticated by the signature of the greffier or the clerk of the Court, would serve as the committal of the prisoner, who would then be sent to be tried before the Court.

905. It would not be necessary to take their verdict upon his guilt or innocence, but upon the question whether he should be tried or not?—Just so.

906. That is the real meaning of the word "criminellement endité?"—Yes. But it would be really an indictment, because he would be indicted in consequence of that declaration.

907. Do you find, in the Coustumier, or in any commentator upon the customs of Normandy, any trace of the enditement?—In Rouillé, I believe, you will.

998. Can you refer us to anything in Rouillé?—Not at this moment. I can upon a future occasion. If I recollect rightly, I have seen in Rouillé several passages which appear to bear upon this question. I might also refer you to the work of Messrs. Hémery and Dumaresq, and to the Report which Mr. Dumaresq, then an eminent advocate of this Court, drew up in favour of a proposition for the establishment of juries.

909. Can you furnish the Commissioners with that document?—I think I shall be able to procure it for them.

910. In the case you propose, it still would not be the same thing as an English grand jury, because they only hear enough for sending down the charge to the petty jury, and they do not

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hear the evidence for the prisoner. Have you looked to the evidence before our Criminal Law Commission on the subject of our grand jury?—No; I have not.

911. You will oblige the Commissioners by giving them a reference to any part of the commentary referred to, which shews the origin of the enditement?—I shall have much pleasure in pointing out what I consider to do so. What I mention upon this subject has been derived from a variety of sources.

912. What has at present occurred to you is, that the verdict of the enditement should be given after hearing the evidence on both sides, *vivâ voce*, which should be taken down?—I meant that the verdict should not be recorded in the book and preserved.

913. Would you have the evidence taken and preserved?—When I explain my meaning further, the Commissioners will see that that is not necessary. I look upon this as a preliminary investigation, that the Procureur Général may have some authority for prosecuting, and to prevent an innocent man being brought before the Courts, and subjected to a long imprisonment, and be otherwise much annoyed, without the fault of any of the authorities, but owing to a defect in the system, from not having any preliminary examination before the trial is proceeded with. That I consider to be a very great defect in our present system, and certainly one which does call for a remedy. It appears to me that, after the enditement has so given its verdict, and the trial has been proceeded with, it might be then useful to continue the system of information which is now in use in Jersey. I am aware that there are some objections to the proceedings; and I am also aware that many persons in this island, for whose knowledge and superior experience I have a very great deference, are of opinion that it might be advantageously dispensed with; but it appears to me that, in so doing, though it might be possible to save a little time, yet it would be, as I conceive, at the expense of justice, and, in many cases, it would expose the prisoner to be condemned and punished, and perhaps to lose his life, on insufficient evidence. And I cannot consider that any lapse of time, weighed in the balance against a man's life, is worthy of the least consideration. I think, on the one hand, it would be proper, no doubt, to curtail the power which the Procureur Général and the prisoner now possess of calling witnesses, *ad infinitum*, and therefore of lengthening the proceedings at their will; but, at the same time, I cannot but consider it useful that the prisoner should have the power of hearing every particle of evidence brought against him, and afterwards of calling witnesses to rebut that evidence. It would be proper, I conceive, that the Procureur Général should then be allowed to call other witnesses in order to disprove any part of the evidence which had been brought forward in favour of the prisoner, or to prove that his witnesses were unworthy of credit; and that the prisoner should be allowed to bring forward witnesses to support the declaration of his former witnesses; and that the hearing of the evidence should stop there. But, within those limits, I certainly think that the mode of information contributes essentially to the furtherance of justice, provided always that the same witnesses who have been heard by information, and whose evidence had been written down, should be called again before the grande enquête, and there subjected to whatever examination, *vivâ voce*, the Crown officers, the advocate of the prisoner, or the jurymen themselves, might think proper.

914. If the Commissioners understand you rightly, you do not propose that the corpus testimonii should be given in the presence of the grande enquête, but simply that the evidence previously given should be read over, and that then they might ask any questions about it.—I mean that the evidence should be first taken down in writing; but, as it happens that what appears important to one man does not to another, a juryman may not be satisfied with evidence which may be satisfactory to the other jurymen, or to the Procureur Général, or to the prisoner. It may be proper, therefore, to bring witnesses before them in order to give them an opportunity of examining those witnesses upon those further points, and at the same time to enable the advocate of the prisoner, if he had any reason to doubt the truthfulness of any witness, to question him severely, and to point out to the jury what circumstances had occurred to shake the credibility of that witness. And it seems to me that you would secure more advantages by having written evidence, and would avoid the danger of judging of the guilt or innocence of a man upon insufficient data, because it is well known, and the Commissioners must have observed it themselves in their own practice, that juries, being chosen from the mass of the inhabitants, are generally composed of men who are not accustomed to sift evidence, or to take notes rapidly, and therefore many observations may escape them which it is of importance they should recollect. The written evidence, it appears to me, therefore, would supply the place of notes to them; and the examination of the witnesses before them would supply a defect which now exists in our system in the want of *vivâ voce* evidence.

915. They would not have notes as to the result of the cross questioning?—As that would be directed to a few points alone, they would recollect them, in all probability.

916. Do you think you could restrain a dexterous counsel from going over the whole case again under such a system?—I think it would do away with the great evil of cross questioning, which has not only the effect of puzzling the Court, but of puzzling the jury. The written evidence would serve as data to the jury, as something to go by: and, their attention being directed to particular points in this evidence, they would recollect what they had elicited, or what had been elicited by others *vivâ voce*. But, if they had no written evidence whatever, or little of it, and that little perhaps taken by a Judge, I cannot consider evidence of that kind equal to the evidence taken in the presence of the witness, and which is exposed to be criticised by him and corrected if found wrong; because it must be recollected that the evidence taken down by a Judge, though no doubt, from his very position, it is to be supposed that he will not abuse his power, but will take it down as correctly as possible, is still *ex parte* evidence; and, as every man is liable to be deceived and to commit errors, evidence so taken down I cannot think to be of the same value as that to which I have been referring.

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917. How do you mean *ex parte* evidence?—Those notes are taken without being read to the witness, without being subject to be canvassed by him.

918. It is a version which the witness has not acknowledged as his own?—No: nor has the prisoner had the power of criticizing it; nevertheless, it has great weight with the jury. Every man, we know, is liable to inattention; he may sometimes omit something, and sometimes he may misapprehend some statement; whereas, when the evidence may be sifted by all parties, from the clashing of opinions truth will result. I think, therefore, the evidence, taken before the Judge by a third party, read aloud to all parties, would be much more worthy of credit, and much better in every point of view, than mere notes taken by a Judge.

919. That might be provided for by the officer of the Court taking down the whole of the proceedings, and that record being put into the hands of the jury at the end of the trial.—If it be read aloud as soon as taken, allowing the prisoner to criticize it, it is immaterial in what way the evidence is taken.

920. You suggest that the only points as to which the witness should give *vivâ voce* evidence before the grande enquête should be points which the prisoner's counsel, or the counsel for the prosecution, upon looking to the written evidence, thinks it material to examine him to. Where all the evidence is *vivâ voce,* that which very much guides the counsel, in his cross examination, is the tone and manner with which the original *corpus testimonii* has been given: but that the counsel would scarcely have so good an opportunity of seeing in the case to which you refer.—Perhaps not: but I must allow that I consider that cross questioning, on very many occasions, is quite as likely to mislead the jury as to enlighten them; because, though undoubtedly this harsh and rapid questioning may occasionally terrify a person intending to deceive, it will have very frequently, I may even say it will generally have, the effect of so far disturbing the equanimity of a conscientious witness, and perhaps the more so in proportion to his conscientiousness, that he will be led into contradicting himself, and appear perjured when he is only suffering under the effects of fright.

921. It is found by experience that the oldest counsel attempt to try that experiment much less than younger ones do.—I have seen instances of women, particularly, brought before the Court, whose morality was unquestioned, and who, no doubt, if they had been cross questioned rather severely, might have been brought to contradict every portion of their evidence.

922. Does not the proposition which you make leave it totally in the discretion of the counsel for the prisoner or for the prosecution to open the whole of the proceedings by *vivâ voce* examination; because he must judge what he thinks it necessary to examine to, and he may think it necessary, so judging, to go through the whole of the case again? That will be in the discretion of the counsel for the prosecution, or in the discretion of the counsel for the defence. Would not the consequence of what you propose, therefore, come to this, that there would be a trial before the grande enquête totally *vivâ voce*?—This evidence would easily be checked by the written evidence.

923. The counsel for the prosecution, or the counsel for the defence, might call upon any witness who had given his testimony, and whose testimony had been given in writing, to give that testimony over again before the grande enquête, saying—"It is essential for my client that this man should be examined before you." Would not the effect, therefore be to have a complete trial over again before the grande enquête?—It might occasionally: but still, in cases where a counsel was aware, from the manner in which a witness had deposed to his evidence which was taken down in writing, that it was hardly possible to shake his testimony, I should hardly suppose he would attempt to question him again, and perhaps elicit something more detrimental to his client than before. But, even allowing every latitude to the counsel, and supposing that he would avail himself of this opportunity of going over the case again, it appears to me the scheme would present this advantage, that you would have, on the one hand, the evidence given against the prisoner taken quietly and calmly when they knew what they were about, and you would have the evidence taken *vivâ voce;* and the jury, comparing the evidence so taken calmly with the appearance of the witnesses when examined *vivâ voce,* might be more likely to come to a true conclusion than if they merely heard the evidence taken in one way.

924. You are trying to unite the advantages of both systems?—As it is said of an ancient nation, that they discussed a matter both drunk and sober, so, by taking the evidence in both ways, you might arrive probably at the truth, while a great guarantee would be afforded to a prisoner that the men who would be called upon to judge him would have certain documents upon which they could rely.

925. You are probably aware that, to a great extent, that is now done: that the whole case against a prisoner, and some part of it for him, is taken down in writing, and is presented to the Court, and can be used to check witnesses by, and also that the first evidence given *vivâ voce* is given in answer to what may be called a friendly examination.—I am endeavouring to state how far the present system might be modified, so as to remedy its defects, and yet retain what is useful in it; because, in making any reform, it appears desirable, as far as possible, to keep the outline of the previous institutions, because they are more easily worked when those who have to carry them out are accustomed to a part of the system. Therefore, if it is possible to modify our system so as to retain its prominent features while you remedy its crying defects, I consider it would be more beneficial than a total change, as there are many features in our system which are most sound and just, and contribute to the ends of justice, in my humble opinion, which might be retained, while whatever is known to work ill might be removed.

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Mr. *Le Cras* further examined.

Mr. Le Cras.

926. The Commissioners understand you wish to address some observations to them.—The observation I wish to make is with respect to the precedents which Mr. Marett was speaking of.

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I wish to direct the Commissioners' particular attention to the latter part of the oath which the jurats take. I understand in the English language it runs thus:—"You shall conform yourself to the more wholesome and better advice of the Bailiff and other Jurats;" and Le Geyt, and all the other commentators, have held that to mean that the Jurats are bound to adopt the opinions of the majority of the twelve; that there must be seven Jurats of the same opinion, so as to form a precedent; in other words, that no decision amounts to a precedent, unless there are seven Jurats of the same opinions, and then that the precedent is evidence of what the law is.

927. According to the strongest interpretation which you appear to be suggesting, it would be more than evidence even; it would actually be the law.—That is the way they lay it down; that seven Jurats must concur, and that, unless seven Jurats are of the same opinion, it does not amount to a precedent. It is only of late years that the full Court has been formed of seven Jurats. In ancient days, it was necessary that there must be a sufficient number of Jurats present, so as to allow seven to be of the same opinion; and that number has been progressively reduced.

928. (To Mr. *Marett.*) In one of the statements drawn up by Dumaresq, or by Pipon and Durel, they give instances of the enditement having consisted of the number of six.—Yes; in ancient days six was the number very frequently.

929. Are there any traces of the period when the number became twelve?

930. Mr. *Le Cras.* Le Geyt gives his account of it as being in 1640.

931. Mr. *Marett.* Till of late years there was very great irregularity in the use of the enditement.

932. *Vicomte.* I have here a note of mine, of the effect of certain decisions in 1607 and in 1611; that, if the six sworn jurymen vary, there may be twelve required for the enditement, or even fourteen.

933. Mr. *Le Cras.* There is one other observation which I wish to make; and that is, that, as regards the mode of taking evidence in writing, there is no security for the person's life.

934. What is the objection to it?—Because the evidence is not sworn to, after it is written, and because the alterations and interlineations of the depositions are not verified by the witnesses.

935. Are they not read to them afterwards?—Yes: but the alterations are not verified. The erasures and interlineations, there is no knowing when they were made.

936. (To Mr. *F. Godfray,* Greffier.) I suppose there can be no difficulty in your producing the records of such evidence before us.—No.

937. Mr. *Le Cras.* In a recent case, on examining the depositions of a witness, I discovered that a very grave alteration had been made. It was in the case of Nicolle.

938. What is the date of that?—A few months ago.

939. *Deputy Vicomte.* It was tried in last March.

940. Mr. *Le Cras.* A witness deposed that the prisoner had been in a scuffle, and that he desired the assailant to desist from striking the prisoner and he did desist; which showed provocation, but that line was struck out; and it was made to appear that the witness deposed that he desired the assailant not to strike him, and he did not. I would strongly suggest to the Commissioners that they should examine those depositions, to see the manner in which they are written.

Adjourned to Thursday next, at ½ past 10 o'clock.

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*Thursday, 10th September,* 1846.

Mr. *Abraham Jones Le Cras* further examined.

Mr. Le Cras.
10 September, 1846.

941. Have you any further observations which you wish to make to the Commissioners?—I wish to direct the attention of the Commissioners to the law of 1840, for enlarging the powers of the police; in which they will find that the vingteniers have the power to seize parties for violent assaults.

942. That is in case of flagrant délit?—Yes.

943. Was that made law for the first time in 1840, or was it an old law?—It was a new law.

944. Mr. *Le Breton.* The powers were extended by the law of 1840.

945. Mr. *Le Cras.* I wish also to state that, as the Procureur Général has observed that he had deferred entering a prosecution against the police till after the cause en ajonction had been heard, and as the party had appealed only against the damages and not against the merits of the case, considering the great difficulty there is to obtain a full Court here, owing to the multifarious occupations of some jurats and the infirmities of others, it might be some eight or ten years before the case is finally disposed of. There are several cases of appeals that have lasted as long as that.

946. In a case of cause en ajonction, what is the appeal?—It is an appeal to the full Bench. Consequently, if the Procureur Général has to wait till the case is disposed of, the witnesses may be dead, the Procureur Général may be dead, and the right of prosecution may have expired.

947. I understand your present evidence to be addressed to this, as shewing that it is not judicious to exercise a discretion by deferring an *ex officio* information till the cause en ajonction, which is connected with it, has been disposed of?—Yes: and the witnesses may be dead. I wish to show that there should be some other means.

948. Is the evidence taken in writing, in a cause en ajonction?—No; it is not, unfortunately.

949. So that there would be no record of the evidence?—No.

950. It is not like the proceedings in a case strictly criminal, which goes to the enditement?—There was no evidence in this case. The facts were admitted.

951. In the event of there having been evidence, there would be no record of that evidence kept in the Court?—There might be.

952. Is it necessary that the evidence should be taken down in writing?—Not when the party has admitted the facts.

953. Is not the admission taken down?—It is: it is made a record. But the party admits only so far as he is concerned: he might not admit the facts as regards the Police.

954. Then there would be no record as regards them?—No. Consequently, I wish to show the necessity, for the interests of justice, that there should be some other channel opened for the punishment of a dereliction of duty on the part of persons who hold public offices.

955. You mean analogous to the right, on the other side of the water, of an individual to bring a case before the grand jury?—Certainly. I have, therefore, to beg of the Commissioners that they would ascertain what is the state of the law, and what measures ought to be adopted to enable parties who have suffered, or who may hereafter suffer, any oppressions of that kind, to bring their cases either by indictment or information before Her Majesty's Court of Queen's Bench in England: otherwise there will be no means of redress opened. There are, at present, a great many difficulties in the way of instituting proceedings. We have no commissioner to take affidavits. There is an Act of Parliament of the 42nd of George the 3rd chapter 85, passed for the purpose of facilitating the trial of persons holding public stations, offices or employments out of Great Britain. I wish the Commissioners to ascertain whether that Act extends to this island, and, if not, to suggest such means as shall make it extend to it, because there may be some legal obstructions in the way possibly of the service of a writ, so that individuals living in Jersey may have the same guarantee for their lives and liberties, and the same remedies for the punishment of all oppression, as they would have if they were living in England; for it would appear at present that there is no remedy. I have suffered great oppression from persons holding public offices; and hitherto there has been no redress for it.

956. You wish to ascertain whether there be any means of trying in England a public officer who neglects his duty here, or improperly refuses to perform his duty, or performs it in an improper way.—Yes. If there is not, I beg leave to suggest to the Commissioners that means should be devised so as to give parties an opportunity of invoking the power of the Court of Queen's Bench in England. There are some legal obstructions at present to the service of writs of that nature. An order in Council, which had been repealed, had been surreptitiously introduced into the Code of 1771. The order in Council is the 21st of May, 1679. It had been repealed before the Code was formed; and it was surreptitiously restored, and was inserted in the Code.

957. What is the article to which you refer?—It will be found in page 159. That Order in Council had been repealed.

958. And the Code restores the Order in Council which had been repealed, without any notice of the repeal?—Yes; but I beg leave to direct the attention of the Commissioners to a rider at the end of the Code, the very last article, which provides that any Orders of the King in Council that had not been inserted in the said Code should nevertheless have force, and that, if any such Orders had been inserted as had been repealed, they should be null and void.

959. It does not lay down any alternative, does it? It says, simply, it is not to repeal any laws established by Royal authority which had not previously been repealed?—It provides that, if anything should be inserted in the Code which had been repealed, the same should be of no force and effect.

960. The Act of 1679 says that "the laws and privileges of the isle are confirmed as of old, and no orders, warrants or letters, of whatsoever nature they may be, shall be put in force in the Island before they have been presented at the Royal Court in order to be registered and published; and, in case such orders, warrants or letters shall be found contrary to the charters and privileges, and onerous to the Island, the registration, the execution and the publication of them may be suspended by the Court till the case has been represented to His Majesty, in order that his good pleasure may be signified thereupon.—That was repealed by the subsequent Order of the 17th of December of the same year.

961. You say that the Order which I have just read has been repealed by a subsequent Order?—Yes, on the 17th of December of the same year.

962. Where is that to be found?—In the Rolls of the Court.

963. The *Vicomte.* The following is the Order of the 17th December, 1679.

"At the Court at Whitehall, the 17th December, 1679, present, the King's Most Excellent Majesty, His Highness Prince Rupert, Lord Archbishop of Canterbury, Lord Chancellor, Lord President, Lord Privy Seal, Duke of Lauderdale, Marquis of Worcester, Earl of Bridgwater, Earl of Sunderland, Earl of Essex, Earl of Bath, Earl of Halifax, Viscount Fauconberg, Lord Cavendish, Lord Bishop of London, Mr. Hyde, Lord Chief Justice Booth, Sir Henry Capell, Mr. Chancellor of the Exchequer, Sir Thomas Chicheley, Mr. Seymour, Mr. Powle. Upon reading this day in Council the Report from the Right Honourable the Lords of the Committee of this Board for the affairs of Jersey in *hæc verbâ*:—May it please Your most sacred Majesty, In obedience to your Majesty's Order in Councill of the 31st of October last, referring unto us the considera$^{on}$ of the differences between Sir John Lainer, k$^{nt}$, Governor of Your Ma$^{ty}$ Island of Jersey, and the Bailiff and Jurates of that Island, touching certain priviledges granted unto the mby an Order of Your Majesty in Council of the 21st May last:—Wee have spent severall days in hearing all parties concerned, as likewise the Commissioners of Your Ma$^{y}$ Customes, and do find: That the said Order was obteyned at this Board, without consulting either the Governor of the said Island or the Officers of Your Ma$^{ty}$ Customes, and that several parts thereof (if put in execution) would be prejudicial both to Your Majesty's authority there and to the revenue of your Customes, and the

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trade of this Kingdome: so that it is our humble opinion that the said order be recalled, and, instead thereof, that Your Ma$^{ty}$ would be pleased to command That all orders, warrants or letters, relating to the publicq justice of the said Island, either coming from Your Ma$^{ty}$ or this Board, which are to be a standing rule for their proceedings, be registered in the Royall Court of that Island before they be put in execution, and that there be a clause in every such order, warrant or letter, requiring the regist$^{y}$ thereof accordingly. Neverthelesse, as to such other warrants, letters or orders as Your Ma$^{ty}$ or this Board shal send and judge fit to be executed without registry, no registry shall be thereof without special direction in that behalf; and, as to Acts of Parliament wherein that Island is named, or any words conteined, that Your Ma$^{ty}$ wilbe pleased to direct that such Acts of Parliament, so soon as they are printed, be transmitted to that Island, with an order of Your Privy Councill annexed, directing the registring and publication thereof. And, to the end that due certificates may be returned from the said Island of the landing of such goods and comoditys, and in such manner, as have been yearly allowed to the inhabitants for the supply of that Island, Wee are of opinion, That the Lords Commission$^{rs}$ of the Treasury, or the Lord Treasurer for the time being, do nominate an officer to be appointed and authorized, by order of Your Maj$^{y}$ in Councill, to signe and sealle certificates of the landing of such comoditys, to be returned hither for the discharge of the securitys here given: and that the said goods and comoditys be all shipped from Yo$^{r}$ Maj$^{y}$ port of Southampton onely, except coales, which are to put on board either at Newcastle or Swanzey. And that the said Officer be likewise empowered to attest the growth and shipping of such goods as, by license of the Governor, shalbe exported from thence for England. And that, for his encouragement to performe the said services with all integrity, care and dilegence, there may be made unto him such recompense and allowance as the Lords Commissioners of the Treasury, or Lord Treasurer, shall judge reasonable. As to the five shillings per Ton on French vessels coming into that Island, Wee are humbly of opinion that the same may be continued, in regard the taking away that duty in that Island would have ill effects on Your Ma$^{ty}$ Customes here, and the trade of this Kingdome, and be collected by the Officer afforesaid; but that the product thereof be wholly employed as Your Ma$^{ty}$ in Councill shall from time to time direct, for the publique occasions and benefit of the Island, and, in particular, towards the repair of the castle, and building the new Prison, and the poor, and not to the private advantage of the Governor or any other person. And, for the two thousands tods of wooll allowed by Acts of Parliament to be yearly transported from home for the only use and behoof of the inhabitants of the said Island, Wee are of opinion That Your Majesty should strictly charge the Governor (who is intrusted by the said Act of Parliament to license the persons who are to be employed jn exporting the said quantity of wooll) to use his utmost care that the license for the whole two thousands tods be distributed, with the greatest equality and indifferency that may be, to severall marchands, and not to too few hands, by which means the said wooll, by a free and common market, may come to the generality of the inhabitants of that Island, for whose employ and benefit the same js jntended: and that the Governor doth not convert or employ any part thereof, either to his owne, the officers, or souldiers' advantage. And, in regard of the inconveniences that attend the inhabitants of the said Island by the remoteness of the prison from the place where the Courts of Justice are held, Wee are humbly of opinion That Your Maj$^{y}$ do permit the inhabitants to erect a new prison in some convenient place within the towne of St. Hilary, to be near the Royall Court there; and that the monies for defraying the charges thereof (in case the product of the said five shilings per ton, which Your Ma$^{ty}$ shall assigne for that use, prove not sufficient) be raysed by a just and equall method on the inhabitants, and particularly that such be chiefly charged who, by their servants, are obliged to fetch the prisoners from Mount Orgueil Castle to the Court at St. Hilary, and during the assizes to attend there, and carry the prisoners back at their owne costs and charges: especiall care being taken that no part of the monies raysed for this purpose be directed to any other use whatsoever. And that the Keeper of the said prison be, from time to time, nominated and appointed by the Baylif and Jurates of the said Island, for the time being. Lastly, as touching the manner of assembling and holding of the Estates of that Island, and the Governor's negative voyce in that Assembly, it is our humble opinion: That the same, together with all the ancient ordinances, priviledges, libertys, ffranchises and immunities, given to or belonging, as well to the inhabitants as the Governor of the said Island, do remain without alteration, as they are established by grants and charters from Yo$^{r}$ Maj$^{y}$ and Your Royall Predecessors, orders and ordinances of Councill, or otherwise. All which is most humbly submitted by, Radnor, Bathe, Cavendish, Bridgwater, Fauconberg, B. London. His Ma$^{ty}$ was pleased to approve thereof, and did order that the same be effectually put in execution in all its severall parts. And His Maj$^{y}$ was pleased further to order: That the Bayliff and Jurats of the said Island do not imprison any souldier of the garrison there, upon any pretence whatsoever (except for breach of the peace), without leave of the Governor first had and obteyned, nor intermeddle with any difference between souldier and souldier. And that the Bayliff and Jurates have the nominating and constituting of the said Keeper of the prison only during His Ma$^{ty}$ Pleasure."

(Signed) "Thomas Dolman."

964. (To Mr. *Le Cras*).—The prior Order is, to a certain extent, qualified and repealed by this subsequent one?—Yes.

965. But you say that, by mistake or design, the subsequent Order was omitted from the Code of 1771, and the prior Order inserted?—Yes.

966. The question is, whether the prior order is still in existence. It would still be in existence, would not it?—That has been decided by the Lords of the Council, in the case of an appeal of Sir Thomas Le Breton, the father of the present Procureur Général, when the jurats of the Royal Court refused to register his letters patent appointing him bailiff of the Island. The Lords of the Council took the case into consideration.

967. Mr. *Le Breton.* There was no appeal.

968. Mr. *Le Cras.* It was a reference to the Lords of the Council, upon the course which the jurats of that day thought proper to take in refusing to register Sir Thomas Le Breton's letters patent: and they grounded their opposition upon that Order in Council, which had been repealed. The Lords of the Council decided that it had no force and effect, notwithstanding it had been inserted in the Code.

969. My impression was, not that they decided that the Order was good without registration, but that it was compulsory upon them to register, when ordered.—I believe not.

970. You think they decided that the Order was good without registration?—That the Order in Council was of no force, notwithstanding it had been inserted in the Code.

971. That Order in Council would not prevent the Crown from insisting upon the registration, as I understand it, of an Order in Council, as the Code puts it that, till registered, it has no effect.—That was the meaning of it.

972. If I recollect rightly the proceeding to which you advert, it did not alter that, but simply stated that it was not optional with them to register or not to register. It only affected the question whether the registration was optional.—It may be so.

973. What is the date of the Order in Council with respect to Sir Thomas Le Breton?—In 1802, the Court refused to enregister Letters patent of the Sovereign, which named the late Thomas Le Breton, Esq., King's Procureur, until they had been able to make a representation to the King, inasmuch as they thought that he had been appointed by undue means, contrary to the privileges of the Island. They grounded their right to do so on the article of the Code of laws. The matter was referred to the Committee of Council; when their Lordships decided that, having maturely considered the order of the 21st May, 1679, as also another order of the 17th December, 1679, by which the above mentioned Order of the 21st May, 1679, was repealed, they are of opinion that the refusal of the Jurats to enregister His Majesty's Letters patent, and to administer the oath to T. Le Breton, Esq., was a grave contempt of His Majesty's Royal authority: and, in a subsequent order to this, the King confirmed the report of the Lords of the Council, by which it was recommended to His Majesty not to act with rigour towards the Court, considering that the Jurats sinned through error, and not through obstinacy; in consequence of which they were peremptorily ordered to enregister the said Letters Patent, and to carry the same into execution, on pain of His Majesty's great displeasure. The Court complied with the Order; and there the matter dropped.

974. That does not absolutely state that the effect of the Code and the Orders in Council together was to keep alive the Order which made registration unnecessary, but that they must register?—Yes.

975. It was compulsory upon them to register?

976. Mr. *Dupré*. We have always considered that we had a right to suspend, in such a case, till His Majesty's pleasure was known.

977. And that it is void till registered, in spite of the Order of 1679?—Yes. The following is the Order of the 24th of February 1802, on the subject, and the Act passed by the Ro al Court.

"L'an mil huit cent deux, le quinzième jour de Mars. Présent, [Son Excellence, Andrew Gordon, Lieutenant Général des Armées de Sa Majesté, et Commandant en Chef et Lieutenant Gouverneur de l'Isle de Jersey, &c., &c. Par devant Jean Dumaresq, écuyer, Lieutenant de Monseigneur le Bailly de l'Isle de Jersey, assisté d'Edouard Le Maistre, Nicolas Messeroy, Phil. Robin, Jacques Hemery, Jacques Hamond, Charles De la Garde, Francois Valpy dit Jauvrin, Pierre Manger, Jean De Carteret, Phil. De Carteret, Thomas Pipon et Jean Poingdestre, écuyers, Jurés. Après avoir entendu lecture des ordres de Sa Très Excellente Majesté en Conseil, datés du 24e Février et du 12e Mars, 1802, comme aussi des Lettres Patentes de Sa Majesté datées le 2e Février, 1802, appointant Thomas Le Breton, écuyer, Procureur Général du Roi en cette Isle (L'Avocat Général du Roi, stipulant l'office de Procureur Général du Roi, ayant été dispensé, à sa requête, d'agir dans cette affaire): L'Avocat stipulant l'office d'Avocat Général du Roi, ouïes ses conclusions, La Cour, pénétrée de la plus vive douleur d'apprendre que son procédé ait pu être considéré par Sa Majesté en Conseil comme un mépris à l'autorité Royale, afin de se justifier et détruire les impressions défavorables qu'ont pu faire sur sa Majesté et les Seigneurs de son Conseil les représentations que son Excellence le Lieutenant Général Gordon, Lieutenant Gouverneur et Commandant en Chef de cette Isle, a jugées à propos de faire, et qui n'ont point été communiquées à la Cour, a cru devoir déclarer solemnellement, comme elle le fait par le présent acte, Que, loin d'avoir eu intention de manquer de respect à leur débonnaire Souverain, elle est, comme elle a toujours été, animée de la plus pure loyauté et de la plus vive reconnaissance pour tous les bienfaits et la protection particulière que sa Majesté a daigné accorder à ce pays: Que son intention, en suspendant, par son acte du 13e Février dernier, l'enregistrement des dites Lettres Patentes, étoit uniquement dans la vue de représenter à Sa Majesté qu'ils concevoient que la recommendation du Lieutenant Général Gordon, Lieutenant Gouverneur de cette Isle, en faveur du dit Thomas Le Breton, écuyer, pour être Procureur Général du Roi (lequel étoit Paymaster du Royal Garrison Battalion, Deputy Judge Advocate en cette Isle, en un mot une personne dans sa dépendance), étoit contraire aux loix établies, notamment aux Lettres Patentes de sa Majesté le Roi Jacques Premier, datées le 9e Août l'an treize de son Regne, qui sont actuellement en force, n'ayant point été rappellées, et qui défendent expressement au Gouverneur de s'entremettre en aucune manière de la nomination, institution ou appointment du Procureur du Roi, et dans la disposition de se soumettre à la décision finale de sa Majesté, comme elle le déclara par son dit acte du 13e Février: qu'elle se croyoit autorisée à ce délai par la loi confirmée par sa présente Majesté en Conseil le 28e Mars, 1771, qui dit expressement "Les Lois et priviléges de l'Isle sont confirmés comme d'ancienneté, et aucuns ordres, warrants ou lettres, de quelque nature qu'ils soient, ne seront point exécutés dans la dite Isle qu'après avoir été présentés à la Cour Royale, afin d'y être enregistrés et publiés: et, dans le cas que tels ordres, warrants ou lettres soient trouvés contraires aux chartres et priviléges, et onéreux à l'Isle, l'enregistrement, l'exécution et la publication en peuvent être suspendus par la Cour, jusqu'à ce que le cas ait été représenté à Sa Majesté, et que son bon plaisir soit signifié là-dessus." Que se trouvant liés, par leur serment d'office, de soutenir les priviléges, libertés et franchises de cette Isle, et de s'opposer à quiconque les voudroit enfreindre, et chargés spécialement par les dites Lettres Patentes du Roi Jacques de donner connoissance de tems en tems au Roi et au Conseil des contraventions entreprises au préjudice des dites Lettres Patentes, et afin de connoître le bon plaisir de Sa Très Excellente Majesté sur ce sujet, la majorité des Jurés adressèrent à sa Très Excellente Majesté en Conseil une humble Pétition et Représentation, datée le 22e Février dernier, laquelle n'étoit point parvenue à l'office du Conseil lorsque le dit ordre de Sa Majesté en Conseil, daté le 24me du dit mois, fut emané. Qu'ayant été appellée par ordre du chef Magistrat à l'assemblée le 2e de ce présent mois, pour entendre lecture du dit ordre de Sa Très Excellente Majesté en Conseil, daté du 24e Février, il ne fut point décidé, comme il a été représenté, de suspendre l'enregistrement des dites Lettres Patentes, mais les Magistrats, n'ayant reçu l'avertissement que tard le soir précédent, Phil Robin, écuyer, l'un d'eux, ne

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pouvant se rendre à la Cour, étant engagé à des affaires importantes qu'il avoit appointées pour ce jour, fut mis en défaut; Charles De la Garde, écuyer, fut exoiné par maladie; huit autres de ceux qui étoient présents demandèrent que la Cour fût remise à un autre jour, pour donner leur opinion, ce qui fut absolument refusé par Jean Dumaresq, écuyer, Lieutenant Bailly, qui, après avoir consulté le Lieutenant Gouverneur sur le sujet, déclara aux Jurés qui demandoient la remise que son Excellence leur permettroit de se retirer dans un autre appartement pour considérer le sujet, pourvu qu'ils donnassent leur opinion ce jour là, mais qu'il ne consenteroit point à la remise demandée, à laquelle proposition, venant de la part du Lieutenant Gouverneur, ils ne jugèrent point qu'il fût convenable d'acquiescer, sur quoi le Lieutenant Bailly déclara derechef, comme il avoit fait le 13e Février, qu'il ne procéderoit point aux affaires publiques (et cela malgrè les déclarations reitérées de la majorité des Jurés qu'ils étoient prêts d'assister à l'administration de la justice, et leur représentation qu'il y avoit deux officiers du Roi présents), et quitta la Cour, sans même diriger le Greffier de faire acte du procédé du jour, et que les dits Jurés n'eurent d'autre recours, dans cette occasion, que de représenter le fait à Sa Majesté en Conseil, par une humble représentation datée le dit jour 2e Mars, 1802. Aujourd'hui, paroissant que tant la dite représentation que celle faite du précédent ont été prises en considération par Sa Majesté en Conseil, et qu'il a plu à Sa Majesté d'ordonner de la manière la plus péremptoire à la Cour par son ordre, daté du 12e du courant, d'enregistrer les dites Lettres Patentes, et d'administrer le serment de Procureur Général du Roi au dit Thomas Le Breton, écuyer: La Cour, toujours disposée à porter obéissance aux ordres qui viennent de la part de leur débonnaire Souverain, a en obéissance aux dits ordres, ordonné l'enrégistrement tant des dits ordres de Sa Majesté en Conseil, datés le 24 Février et 12 Mars, 1802, que des dites Lettres Patentes datées le 2e Février, et a administré le serment de Procureur Général du Roi au dit Thomas Le Breton, écuyer, se réservant toutesfois d'adresser à Sa Très Excellente Majesté telles représentations pour le maintien des loix, libertés et franchises de cette Isle, que le cas requerra, et de supplier sa Majesté de fixer les limites entre les pouvoirs civil et militaire de ce pays, de manière qu'ils ne puissent être mépris, et qui, en bornant chaque pouvoir à ses fonctions respectives, assurent le repos et le bonheur des habitans. Desquels ordres de sa Majesté en Conseil et Patente la teneur ensuit.

At the Court at St. James's, the 24th of February, 1802, Present the King's Most Excellent Majesty, Lord President, Duke of Roxburgh, Lord Chamberlain, Earl of Chesterfield, Earl of Aylesford, Earl of Harrington, Earl of Rosslyn, Lord Hobart, Lord Pelham:

Whereas there was this day read at the Board a Representation from the Right Honourable the Lords of the Committee of Council for the affaires of Jersey and Guernesy, in the words following, viz.: May it please your Majesty. We have had under our consideration an Act passed by the Royal Court of your Majesty's Island of Jersey on the Thirteenth of this instant February, whereby it was determined, by a majority of the Jurats of the said Court, to suspend the registering of certain Letters Patent granted by your Majesty to Thomas Le Breton, esquire, whom your majesty has been pleased to appoint your Majesty's Procurator General of the said Island of Jersey, and to delay administering to the said Thomas Le Breton, esquire, the oath of office of your Majesty's Procurator General in the Island of Jersey, on the grounds stated in the said Act. And we have likewise had under our consideration a letter addressed to the Right Honourable Lord Pelham, your Majesty's principal Secretary of State for the Home Department, from Lieutenant General Gordon, your Majesty's Lieutenant Governor of the said Island, with several enclosures relative to the proceedings of the Royal Court in the Premises; and the Lords of the Committee, having maturely considered the Order in Council of the 21st May, 1679, referred to in the said Act, and also a subsequent order in Council, bearing date the 17th December, 1679, whereby the above mentioned order of May 1679 was recalled, are of opinion that such refusal of the jurats to register Your Majesty's said Letters Patent, and to administer the oath of office to the said Thomas Le Breton, Esq., was an high contempt of Your Majesty's Royal authority, and that it may be advisable for Your Majesty peremptorily to order, require and command the said Royal Court forthwith, and without delay, to register Your Majesty's said Letters Patent, and to administer to the said Thomas Le Breton, Esq., the oath of office of Your Majesty's Procurator General of the Island of Jersey. His Majesty, having taken the said representation into consideration, was pleased, with the advice of His Privy Council, to approve thereof, and doth hereby peremptorily order, require and command that the said Royal Court do forthwith and without delay proceed to register His Majesty's Letters Patent appointing Thomas Le Breton, Esq., to be His Majesty's Procurator General of the said Island, and to administer to the said Thomas Le Breton, Esq., the usual oath of office, as His Majesty's Procurator General of the said Island of Jersey: whereof the Bailiff and Jurats of the Royal Court of His Majesty's said Island of Jersey for the time being, and all others whom it may concern, are to take notice and govern themselves accordingly."

(Signed) "W. Fawkener."

978. (To Mr. *Le Cras.*) The most that can be made of this is that, upon an extremely doubtful point of construction, the Court naturally maintain their own authority.—As the matter now stands, there is no remedy for oppression.

979. The remedy would be to apply to the Privy Council for an Order compelling the registration of any statute.—Still that Order in Council would not be registered. There have been several cases in which two or three Orders have come down, one after the other, and they have been disobeyed.

980. With respect to the difficulties arising from prosecutions being instituted solely upon the responsibility of the head Law Officer, it is a matter in which the laws of different countries differ more perhaps than on any other point; but you may be aware that in England, if a private individual institutes a prosecution, the Attorney General has the power of entering a *nolle prosequi*. He does that upon his own responsibility.—Yes; it is quite the same thing. Under the cover of that Order in Council, which has been repealed, the authorities here have taken upon themselves to refuse to register Acts of Parliament, and also to obstruct the course of Her Majesty's prerogative Writs. And, consequently, the *Habeas Corpus* Writ, which extends to the island by Act of Parliament, remains a dead letter. The next thing to which I wish to direct the Commissioners attention is the Act of Court of the 28th of July, 1601, forbidding the Vicomte or Dénunciateur serving any order or process without first obtaining permission of the

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Court. That Act of Court is acted on to this day, and is brought forward as an authority to obstruct the course of Her Majesty's writs.

981. Has not that particular Act been the subject of an Order of the Privy Council?—No.

982. (To Mr. *Dupré.*) Is it the law that the Vicomte or Dénunciateur shall not serve any process without leave of the Court?—Processes from England.

983. Mr. *Le Cras.* The Act of Court says, "Whereas various commissions have been obtained through the importunity of several persons from their Honours. the Lords of the Right Honourable the Privy Council, whereby several of Her Majesty's subjects are greatly harassed, contrary to the privileges of the island, and avail themselves of and abuse the ministerial functions of the Viscount or Denunciator, the whole contrary to their office, which depends entirely on the Bailiff and the Magistracy: for these causes it has been found expedient that they shall not execute any orders, commands, or warrants, by the command or request of such commissions, without the permission and leave of the aforesaid Bailly and Magistracy."

984. Mr. *Dupré.* That Act of 1601 is undoubtedly repealed by the Code of Laws. No Vicomte or Dénunciateur could legally serve any summons or other document from the English Courts.

985. Mr. *Evans.* Processes are served here from the Court of Chancery; and commissions are executed. I know that of my own knowledge.

986. It probably goes through this Court?—No.

987. (To Mr. *Le Cras.*) The fault to which you are now directing our attention is the not giving force here to the writs of the English Courts altogether?—Especially Prerogative Writs, such as a Writ of Mandamus, to compel a lawful act being done by the parties whose duty it is to do it.

988. A Mandamus would not be granted by the Court of Queen's Bench, on a distinct principle: they would refuse it, because they would say there is another remedy in the Privy Council.—Considering that the Police is political, and that our Jurats are political Jurats, and that they have not been hitherto made responsible for their acts, it is necessary, since there is great difficulty in entering prosecutions for malversation of conduct, that some other channel of redress should be opened.

989. You think there is not sufficient control from England?—Decidedly. It is a very great grievance; and I suffer myself from it. In fact, unless some channel is opened, there is no security for life or for liberty. As the Police are a Political body, and our Jurats are political, they are influenced by various personal considerations, and they cannot avoid it. It is impossible for them to do so, when you recollect that in my case, when it was brought before the Court, Mr. Winter Nicolle, all through the proceedings, evinced great personal hatred towards me, and towards my advocate, so much so that the Court interfered upon the subject, and Mr. Winter Nicolle was about to be censured for his act.

990. It does not appear necessary to go into personal matters of that kind. The Commissioners understand, of course, that, if it be true that the constitution of the tribunal necessarily makes it a political one, grievances must continually arise, where an individual is an object of political partiality.—Of course; and that makes it necessary that there should be some means by which parties might be punished for it.

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Mr. *Richard Duparcq* further examined.

Mr. Richard Duparcq.

991. The Commissioners understand you wish to give some explanation of the evidence you gave the other day, or to state some facts which you then omitted.—After we had been to Mr. Jardin, for the purpose of getting bail for Mr. Romeril, we went to Mr. George Amy. Mr. Romeril asked Mr. George Amy to remain security for him; and he asked what amount. I said 50*l.* Mr. Amy said, "I believe there is no danger." I said "No, it is only until next Saturday." That is to show that Mr. Romeril had been only four days under bail.

992. Was Mr. Amy the bail that was taken?—Yes, for 50*l.*, to produce Mr. Romeril the next Saturday to the Court. I believe, if Mr. Amy is present, he might state whether I mentioned that: because two police were along with me, who can prove that I said so; Mr. Le Feuvre and Mr. Le Gallais.

993. Did it occur to you to tell Mr. Romeril of this?—No; I thought, when the Attorney General would not enter a Report, it was done with.

994. Did not it occur to you to tell Mr. Romeril that this was the position in which he was placed, that he was fully at liberty, because the Attorney General did not intend to proceed further?—It did not. I believe I told Mr. Amy, in Court, that day, that the Attorney General would not enter the Report.

995. You told Mr. Amy that?—Yes; he was the security.

996. Are you certain about that?—Yes.

997. Was it for 50*l.* or 30*l.*, the security was taken?—For 50*l.*

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Mr. *George Amy* examined.

Mr. George Amy.

998. Were you bail for Mr. Romeril?—Yes.

999. In what amount?—50*l.*

1000. What was the condition of that security? To do what?—To present him to the Court whenever called upon.

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1001. When did you first receive any information that you were discharged from that security?—I have had no information whatever.

1002. Not up to the present time?—No.

1003. Can you take upon yourself to say, from your recollection, that Mr. Duparcq did not tell you at the Court that the Attorney General did not intend to proceed further, and that you were released from your security?—Yes.

1004. Are you sure that he never said so?—Perfectly sure.

1005. Did you have any conversation with Mr. Duparcq in Court?—I recollect the circumstance perfectly well. I was requested to be in Court on Saturday. I accordingly was so, expecting that the case should be brought forward. The case did not come forward: and, in coming out of Court, I remember perfectly well having said to Mr. Duparcq, "I have brought Mr. Charles Romeril to Court, as I have been requested: consequently I consider myself no more bail for the gentleman." Upon that Mr. Duparcq told me: "you must not have that impression, we cannot lose such a good security."

1006. Mr. *Duparcq.* I never said such a thing.

1007. Mr. *Amy.* I will take my oath of it. I do not state a single word but what I am perfectly ready to support by my oath, if necessary. I had no interest at all in the case; and, when I remained security for the person, I told Mr. Duparcq it must be under the perfect understanding that I did not meddle with their quarrels myself. Previously to remaining bail, I enquired of Mr. Duparcq whether he had bound over the two young Chevaliers to keep the peace. He told me that he had.

1008. Did you have any conversation with Mr. Duparcq, at any subsequent time, as to your being liberated from the bail?—I do not think I had: but I know that I laboured under the impression that I remained security for Mr. Romeril during the whole time.

1009. (To Mr. *Duparcq.*) The Commissioners understand you to persist in your recollection the other way?—Perfectly so.

1010. That Mr. Amy's recollection is incorrect?—I have no knowledge at all of my having said that I would never lose such a good security. I have not the least recollection of it: if I had, I would say it at once.

1011. (To Mr. *Amy.*) Did you, in point of fact, attend at the subsequent Courts?—Never: I never was requested to do so.

1012. Did you know, as a fact, that the Procureur Général had refused to enter the Report?—No.

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Stephen Thomas.

*Stephen Thomas* examined.

1013. Do you live at No. 18, Grove Place?—Yes.

1014. Had you a demand made upon you, on the 10th of September, 1845, on account of plying with a cart and horse on the pier?—Yes.

1015. What was demanded of you?—Two and sixpence.

1016. By whom?—By Mr. Chevalier.

1017. You refused to pay, I believe?—Yes.

1018. Did you go with Mr. Chevalier then?—No.

1019. What was the next thing that took place?—He told me I was to be at home between one and two, and he would come to take me to prison.

1020. Was that the expression?—Yes.

1021. Did you attend for the purpose of being taken to prison?—Yes. I remained at home, more than two hours; and he did not come for me.

1022. On what day was this?—It was on the 10th September, 1845.

1023. What was the next thing that happened about it?—On the following day, he seized me in the street, and took me to prison.

1024. Did you go before a Magistrate before you went to prison?—No.

1025. How long did you stay in prison?—I was put in on the Thursday about 10 o'clock.

1026. Was that the 11th?—Yes.

1027. Ten o'clock in the morning?—Yes; and they kept me there till the next day about eleven.

1028. When you were taken into prison, were you searched, or anything taken from you?—Yes: the man took away from me 2*l.* 9*s.* 6*d.*, British money, and sundry other articles.

1029. Was that the gaoler?—It was some man there.

1030. Not Mr. Chevalier?—No: it was some turnkey.

1031. The next day, you say, about eleven, you were liberated. How did you get out?—Mr. Alexandre came for me.

1032. Who is he?—A police officer; he came to take me to Court.

1033. Mr. *Le Breton.* He is an officier de connétable.

1034. (To *Stephen Thomas.*) How many gentlemen were sitting as a Court?—I do not recollect. I remained in Court about an hour; and Mr. Chevalier came up to me, and told me that I might go home, and take my dinner: that he was going for his: accordingly I did so.

1035 Did you come back to Court?—Yes; I came back to Court.

1036. At what time?—In about half an hour after I left: and I remained for an hour; and then I went about my work. I then went down to the pier, and took my van, and brought up nine passengers and their luggage into the square. The people cannot land at low water without some conveyance. In coming up, I met Mr. Bromer.

1037. Was this on the 11th?—On the 12th, Friday.

1038. When you met Mr. Bromer, was it the same day you were dismissed from the

Court?—Yes. He began to blow me up, as I was to have gone the day before to the mill for him. He was angry that I had not been.

1039. Did you tell him you had been confined in prison?—Yes; and he accompanied me to Mr. Hugh Godfray's, the dénunciateur, in Vine Street. He informed me that I had been wrongly imprisoned: so I went home; and, on the following Monday, Mr. Chevalier seized me again in the street, and brought me to Court.

1040. He did not take you to prison on that occasion?—No. After waiting some time, I was presented at the bar before the Judges.

1041. How many were sitting?—I do not know: three or four. I cannot say how many.

1042. Do you know the gentlemen who were there?—No; I cannot remember who they were.

1043. What happened? Did Mr. Godfray appear for you?—Yes: he defended me.

1044. What happened?—I was sent about my business.

1045. Have you had your money?—No; I have never been to the gaol since.

1046. Then you have not asked for it?—No.

1047. Has it been offered you?—No.

1048. Have you had any conversation with the turnkey who took it away?—No.

1049. How came it that you did not ask for your money?—Because I thought, perhaps, it would be better for me to stop away. I thought, if I went back, they might detain me again.

1050. Do you mean that that is the sole reason you did not ask for your money?—Yes.

1051. Did you take any body's advice upon the subject?—No.

1052. Did you ask Mr. Godfray whether you could have your money again?—Mr. Godfray told me I had better stop away.

1053. When Mr. Godfray said that, had you told him you had thoughts of getting your money?—No: I told him they had taken some away from me.

1054. Was it in answer to that, that he said you had better stop away?—Yes.

1055. Did any body else advise you not to go for your money?—No.

1056. We understand that you did not go to the gaol, because you were afraid that, instead of getting your money, they would put you in prison?—Yes.

1057. Are you rated in St. Héliers?—No.

1058. Have you a rateable property?—I am a householder in the parish of St. Héliers.

1059. Whereabouts?—18, Grove Place.

1060. Are there many houses there?—Yes.

1061. How many?—There are a great many.

1062. Are the householders there generally rated?—Yes.

1063. Are the houses of the same size as yours?—There are none so small, perhaps, as mine. I pay fifteen pounds three shillings and fourpence rent.

1064. Had you applied to be rated?—Yes.

1065. To whom?—At the Parish Meeting.

1066. Have you ever appealed to the Court for not being rated?—No.

1067. You have applied to the Parish Meeting?—Yes.

1068. How often have you applied?—Once.

1069. When?—I cannot say how long ago, perhaps three or four months: it might be more; it might be six months.

1070. That is the only time, is it?—That is the only time.

1071. You have never complained to the Court of your not being rated?—No.

1072. Have you ever complained to the Court about not getting your money?—No.

1073. You have not applied to any body, we understand, about that. You have not asked Mr. Le Sueur, for instance, who is at the head of the Police, about your money?—No.

1074. You said Mr. Bromer met you. Have you been in Mr. Bromer's service?—Yes; about six or seven years.

1075. Did not you take Mr. Bromer's advice on the subject, what you were to do with regard to your money?—No: I never asked him about it.

1076. Did you tell him they had taken your money away?—Yes.

1077. Did you ask him what you were to do to get it again?—I asked him; and he told me I had better leave it to Mr. Godfray.

1078. And Mr. Godfray told you not to go to prison, because they would put you in instead of giving you your money?—That was the first day: he said they might detain me if I went there again. So that I have never been since.

1079. Have you made any application for your money since the time at which the Court stated you were discharged?—No.

1080. You have not applied to Mr. Godfray since that?—I have been to Mr. Godfray's once or twice since; and he told me I had better leave it for awhile, because he said, if I were taken before the Court, I should have no chance.

1081. We are asking you now as to the time after the Court had dismissed you. Did you then ask Mr. Godfray's advice about going for your money?—Yes.

1082. And he advised you not to go?—Yes.

1083. What did he say?—I cannot recollect what he said; it is so long ago.

1084. Did he give the same reason, that they would put you in prison if you went for your money?—He said, I had better leave it for a while.

1085. Why did he say so?—I forget for what purpose it was.

1086. Did you make any complaint to the Secretary of State respecting your money?—No.

1087. Did you make any complaint of your being arrested to the Secretary of State?—Yes.

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1088. What was done in consequence?—I never received any answer.
1089. Did you do it by letter?—Yes.
1090. Did you state, in that letter, that your money had been withheld from you?—Yes.
1091. Did you complain to the Prison Board?—No.
1092 You complained to no one, then?—No.
1093. By whose advice was it that you applied to the Secretary of State?—By Mr. Bromer's.
1094. Did Mr. Bromer say it would be better for you not to ask for your money?—No.
1095. Mr. *Bromer.* I wrote the letter for him to the Secretary of State.
1096. (To *Stephen Thomas.*) Did you cause any statement to be inserted in any of the newspapers as to what had happened to you?—Yes.
1097. Did you state there that you had been robbed of your money?—Yes.
1098. And also to the Secretary of State, I suppose?—Yes.

*The following Act of Court was read.*

"A la Cour Royale de l'île de Jersey. L'an mil huit-cent quarante-cinq, le huitième jour de Septembre. Par devant Messire Jean De Veulle, Chevalier, Bailli de l'île de Jersey, assisté d' Edouard Léonard Bisson et Philippe de Ste. Croix, Ecuyers, Jurés. Stephen Thomas, saisi de fait par le centenier Chevalier de la paroisse de St. Hélier, et présenté en Justice par le connétable de la dite paroisse, sous prévention d'avoir enfreint l'article 16e du réglement sur les Bateliers, Portefaix et Chartiers, et de s'être refusé un paiement de l'amende de deux chelins six pennies sterling, dont il s'était rendu passible, le tout selon que plus au long est contenu en rapport du dit centenier, qui est demeuré logé au greffe. Le dit Stephen Thomas a prétendu d'abord que le rapport est informe, que sa présentation adjourd'hui est illégale, étant déclaré dans le rapport qu'il fut saisi Jeudi dernier, et avec la permission de Messire Jean De Veulle, Chevalier, Bailli, logé à la garde du geolier de la prison, où il est resté tout depuis, tandis qu'au contraire il fut libéré Vendredi dernier par le centenier Chevalier, et qu'il a été saisi de nouveau ce matin, et, de plus, que le dit centenier a aujourd'hui déclaré en Cour qu'il a logé le dit Stephen Thomas en prison Jeudi dernier, et n'a remis la permission par écrit au geolier que Vendredi matin. Attendu que le dit Stephen Thomas fut mis en liberté Vendredi dernier par le dit centenier, et qu'il n'a été saisi de nouveau que ce matin, faits qui ne sont point mentionnés dans le dit rapport, la Cour a jugé que le dit Thomas n'est point poursuivable sur le présent rapport. Partant il est mis en liberté."

1099. Mr. *F. Godfray,* (Greffier.) The following is the report presented to the Court.

*The same was read as follows.*

"A Pierre Le Sueur, Ecuyer, Connétable de la paroisse de St. Hélier. Monsieur, Mecredi le 3e du courant, le bateau à vapeur *South Western* entra dans le port de St. Hélier, vers les neuf heures du matin, et, au moment où il rangeait le long de la chaussée du sud, le nommé Stephen Thomas sauta sur le pont, et s'empara des effets de plusieurs passagers qu'il mit dans sa voiture ou van. Il y avait alors plusieurs portefaix sur la chaussée. Peu de tems après, le dit Stephen Thomas se trouvait encore avec sa dite voiture sur la chaussée, lorsque les passagers altéraient d'abord du *Monarch.* Je lui dis qu'il avait enfreint l'article 16e du réglement sur les Bateliers, Portefaix et Chartiers, et qu'il s'était rendu passible de l'amende de deux chelins six pennies; à quoi il me répondit qu'il ne la paierait pas, et qu'il défiait qui que ce soit de l'empêcher de gagner un chelin lorsque l'occasion se présenteroit, et qu'il continuerait, comme par le passé, d'autant qu'il avait sa voiture avec lui. Je ne le saisis pas alors: mais le lendemain, Jeudi le 4e du courant, je rencontrai le dit Thomas dans "*Grove Place,*" et lui ayant renouvellé la dite demande, de me payer l'amende susdite, il me répondit qu'il ne le ferait pas. Je lui dis que dans ce cas je le saisirais, à moins qu'il ne donnât caution de se présenter en Cour Samedi prochain; sur quoi il me répondit qu'il ne prendrait pas la peine de chercher une caution, et de faire de lui ce que je voudrois. En conséquence, je saisis le dit Stephen Thomas, et le remis, avec la sanction de Messire Jean De Veulle, Chevalier, Bailli, à la garde du geolier de la prison. De tout quoi je vous fais ce présent rapport." Signé: "Jno. Chevalier, Centenier." "A Messire Jean De Veulle, Chevalier, Bailli, et à Messieurs les Jurés Justiciers de la Cour Royale de l' Ile de Jersey. J'ai l'honneur de présenter le rapport d'autre côté, ainsi que le dit Thomas, afin qu'il en soit ordonné." Signé, "P. Le Sueur, Connétable de St. Hélier. Délivré en Cour séante, ce 8e septembre, 1845."

1100. (To Mr. *Le Sueur.*) Was it your duty to present this Report as constable?—The centenier would present it.
1101. By the report it appears that Thomas was charged with a violation of the 16th and and 17th articles of the law with regard to boatmen, porters and carters?—Yes.
1102. There is a law of that kind?—Yes.

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Mr. Hugh Godfray.

Mr. *Hugh Godfray* examined.

1103. You are the gentleman mentioned in the evidence of Thomas?—Yes; I am one of the officers of the Court.
1104. You acted on this occasion as legal adviser of Thomas?—Yes.
1105. Did he, after his dismissal, ask what he was to do for his money?—I will state what I know of the affair. The day after Stephen Thomas had been put in prison, Mr. Bromer came and told me under what circumstances he had been put in gaol. I accompanied Mr. Bromer to the gaol, and asked the gaoler who had given the sanction for the imprisonment of Thomas, and when it was sent to the gaol. The gaoler shewed it me: it was signed by the Bailiff, Sir John De Veulle: and the gaoler informed me it had been brought that very day, at eleven o'clock, and that the man had been in prison the day previous.
1106. That would be on the 5th; and he had been in prison on the 4th?—Yes.
1107. He was taken on the 4th?—I cannot remember the date now. I take the dates to

be correct. I entered nothing of that in my books. The gaoler told me that he had taken some money from the man; that that was the regulation of the goal.

1108. Was that the first you knew of his having taken the money?—I dare say Mr. Bromer told me it.

1109. And you mentioned it to the gaoler?—I asked the gaoler whether he had done so. The man Thomas was brought up to the Court one day. I was on duty in the Court.

1110. What was Thomas charged with?—By the report it appears to be an infraction of the 16th article of the law as to porters and boatmen.

1111. Does that subject him to a penalty of 2*s.* 6*d.*?—Yes. In the afternoon of that day, I saw Thomas; and he told me Mr. Chevalier had told him to go to dinner, and that he had come back to Court.

1112. He was not in Court then, was he?—He was in the vestibule of the Court. I told him he was a fool to have come back; that he ought to have remained at home. He then asked me if he was to go to gaol to get his money. I told him not to go, as probably the goaler did not know that he was released, and would keep him there.

1113. You did not advise him never to go?—No.

1114. He might have so understood you, possibly?—He might. A few days after that, Mr. Bromer came to inform me that Thomas had been arrested again by Mr. Chevalier, and was brought into Court. I instructed my brother, Mr. Francis Godfray, the advocate, of the circumstance; and Thomas was liberated by the Court.

1115. What were the grounds of the decision?—They are contained in the Act.

1116. Are we right in supposing that the ground was an informality int he centenier's Report?—It is said, because he had been seized a second time, which does not appear in the Report.

1117. It was not a decision upon the merits of the question, of his plying there?—The Court did not put it in the Act; but the advocate made use of it. The advocate's grounds of defence were that Mr. Chevalier had no right to take him to jail, without at the same time delivering to the gaoler the permission for his imprisonment.

1118. The order for his imprisonment at the time?—Yes: that is the regular course, and ought to be followed: but it is hardly ever done. There would not be so many unwarrantable imprisonments as there are, if that course were followed.

1119. This is part of the Act, "The said Stephen Thomas, having alleged first that the Report was informal, that its presentation to day is illegal, it being declared in the Report that he was taken up last Thursday with permission of Sir John De Veulle, Knight, Bailiff, and lodged in custody of the gaoler of the prison where he had remained ever since till he was liberated on Friday last, and that he has been newly taken up again this morning, and also that the centenier to day has declared in Court that he has lodged the said Stephen Thomas in prison last Thursday, and had not received permission in writing to the gaoler till the Friday morning: in consideration that the said Stephen Thomas was set at liberty on Friday last, and that he has not been seized afresh till this morning, which are not mentioned in the Report, the Court has adjudged that the said Thomas is incapable of being prosecuted upon the present Report, and that he be set at liberty." That was the sentence of the Court?—Yes.

1120. They neither affirmed nor negatived the ground given by the advocate, but said, "here is an informality, and the man must be liberated?"—Yes: it was to avoid giving a decision upon that point.

1121. The strict rule is that no body should be sent to prison without the warrant of Sir John De Veulle, or some one authorised to give it, I believe?—I have been practising in Court, and have held the office I now hold, of dénonciateur, for thirty four years, and for twenty one years I have been autorisé to the Procureur Général.

1122. You instruct him, as we should say in England?—Yes. My belief is that no police officer has any right at any time to imprison any person till he has taken him before some magistrate, and obtained his sanction.

1123. By "imprison" you mean imprison in the gaol?—Yes: he has, no doubt, a right to keep him. That is the reason the constables have such a number of officers to assist in keeping persons prisoners.

1124. You have no lock-up house?—No. The custom formerly was that they were taken to a public house. The publican was obliged to receive them; and they were kept there by the officiers du connétable till the centenier had an opportunity of taking them before a magistrate.

1125. That you state to be your clear view of the law of imprisonment in gaol?—Yes.

1126. As matter of practice is that law adhered to?—No: quite the contrary.

1127. Do you mean that it is systematically infringed?—Yes, by almost all the Police. Mr. Chevalier's Report is worded in such a way as to intimate that, when he had put Stephen Thomas in gaol, he had the sanction of Sir John De Veulle. It is worded thus: "En conséquence, je saisis le dit Stephen Thomas, et le remis, avec la sanction de Messire Jean De Veulle, Chevalier, Bailli, à la garde du geolier de la prison."

1128. The decision of the Court at present is that the defendant is illegally imprisoned or committed, which vitiates the Report and destroys the authority?—Yes.

1129. Have you known it practised, to get an authority and to enter it as previously obtained, *ex post facto*?—Yes: it is often done. It is generally done now in reports.

1130. In point of fact, is the law evaded by entering a subsequent permission as having been given previously?—Generally, the Police take a person to prison, and put him there, and keep him there some hours, or perhaps a day or two, and then apply to a magistrate for a permission.

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1131 Of what date does that permission then appear to be?—The magistrate dates it the day he gives it. In the books of the gaol, for this Thomas, he is noted as being put in goal on such a day, and the permission as being received the next. The gaoler always takes care to do that.

1132. The inaccuracy never takes place at the gaol?—No: it is the police officer who commits the inaccruacy.

1133. Do the gaol books record the inaccuracy?—They ought to do so.

1134. Do they do so in this case?—The following is the entry: "Stephen Thomas—England—age 26—infraction of law for porters, boatmen, and carters. Where committed; St. Héliers. By whom seized; Centenier Chevalier. Date of confinement; September 4th. By whose orders; Sir John De Veulle. Date of trial; September 8th. Liberated. Date of discharge; September 5th."

1135. The book does not show an inconsistency upon the face of it?—Sir John De Veulle's order will show the date. That is at the prison.

1136. The entry in the book does not show the inconsistency, because it does not state the date of the order?—No: it is always supposed that the order ought to accompany the prisoner.

1137. But the order, having been given, remains at the prison?—Yes: it is filed.

1138. And may be compared with the prison book?—Yes.

1139. It was so in this instance, I presume?—Yes: the gaoler shewed it to me and Mr. Bromer: we both of us saw it.

1140. Have you anything further to add?—I may say that the centenier had no right to seize the man in the first instance; the law was périmée. It was a provisional law, and had expired at the end of three years.

1141. At the time this took place there was no law applicable to that case at all, I understand you?—No.

1142. Will you turn to Article 16th of the law of 1844?—

"Personne, si ce n'est les portefaix licenciés, ne pourra se charger, pour un salaire, du transport des effets des passagers lors de leur débarquement, sous la pénalité de deux chelins six pennys par chaque infraction. Si des personnes, dans la vue d'exercer l'état de portefaix sans être licenciées, se représentent habituellement comme ne recevant aucun salaire des passagers qui leur confieraient leurs effets, le maître de port, ou assistant, aura le droit de leur défendre de s'en charger. Les cochers, ou voituriers, qui se rendront sur les quais avec leurs voitures, lors de l'embarquement ou du débarquement des passagers, seront tenus de ranger leurs voitures à tel endroit que le maître de port, ou assistant, indiquera, et de rester près de leur chevaux, sous la pénalité de dix chelins pour chaque infraction."

1143. That inflicts a penalty of 2*s.* 6*d.* on every person who is not licensed, engaged in carrying the luggage of passengers from the place of their disembarking?—Yes.

1144. Will you look at Article 18?—

"Dans le cas du refus de paiement de l'amende à laquelle un batelier ou un portefaix se serait rendu passible, sa licence lui sera retirée pour tel temps que le maître de port, en ce qui regarde les bateliers, et le connétable de St. Hélier, en ce qui a rapport aux portefaix, le jugera convenable; et si des individus en contravention ne sont ni bateliers ni portefaix, et qu'ils refusent de payer les pénalités par eux encourues, ils seront saisis par la police ou le maître de port, et présentés en justice."

1145. Will you read Article 20?—

"Les amendes et pénalités portées au susdit réglement seront levées sommairement par le connétable ou centenier de la paroisse de St. Hélier, ou par le maître de port, et seront applicables, un tiers à la Reine et le reste au bénéfice des hâvres et chaussées."

1146. That gives the constable and centenier the power summarily of levying fines on parties?—Yes.

1147. The other Article gives the Police power of seizing them and bringing them to justice?—Yes.

1148. Does it authorize the Police to take a person to prison?—No: certainly not. I am the more certain of that, as it speaks of the maître de port. The harbour master's jurisdiction refers to the Harbour.

1149. What would be the proper course for the Police to have pursued in this case, supposing the law to have been in force, which you say it was not?—The proper course for Mr. Chevalier was to have taken either the man's cart or his horse; because I think, when a person has property to pay a fine, his property must be taken before his person. The person is too sacred to be trifled with in that manner.

1150. Will you look at the latter clause of the 18th Article: "Ils seront saisis par la police, ou le maître de port, et présentés en justice." Does that give the police the power of taking a man and confining him in prison, or only of summoning him to appear before the Court to answer for the charge?—My idea is that the Police might arrest a person, and bring him forthwith to the Court; but that in no way for 2*s.* 6*d.* can they put a man in gaol.

1151. They might arrest him and bring him before the Court instanter?—Yes.

1152. Supposing the Court were not sitting, what would be the proper course?—Not to take him up before the Court sits. Thomas was not taken up then. He was taken up the day after he had committed the supposed offence.

1153. Will you, upon consideration, abide by that answer, that in no case should the Police take him up unless the Court were actually sitting? Is it different from any other seizure? They have the power of seizure in general.—It is very different from a seizure for robbery. This is not a crime: it is a penalty which is incurred.

1154. So far as it gives the Police the power of seizing is not it put upon the same footing?—No: and I am borne out in that by seeing that it is "Le Maître de Port." He cannot seize an individual and put him in gaol.

1155. Not under these regulations?—An Act of the States could not give him the authority.

1156. Would not any Act of the States bind the inhabitants of the island till the law was repealed?—I do not think the States can give such a power to persons who are not in office, and who, by the constitution, have not such a power.

1157. Could not the States pass an Act for the regulation of the harbour?—Yes: but not giving such a power to the harbour master.

1158. You say, if the Court were not sitting, the Police could not take him up at all?—They could always find the person and bring him before the Court. Another way would be for the police officer, or harbour master, to make a Report to the Court; and then the Court would order its officer to bring the man before the Court.

1159. Have not you the means of compelling an appearance before the Court, called "signification?"—Yes. The Report would be the order; and there would be an order by the Court to make a signification to the person.

1160. Is the signification a simple summons?—Yes; a simple summons by the officer of the Court to appear?

1161. You say a man might be seized and taken immediately if the Court were sitting?—Yes: it says, he may be seized and brought before the Court.

1162. Could the harbour master seize him?—He could make a Report to the Court.

1163. Could he bodily seize him and take him up to the Court?—It is said in the law: "ils seront saisis par la police ou le maître de port:" but I do not think the harbour master would have the right of seizing.

1164. Not under any circumstances?—No,n o he person.

1165. You have no doubt that that is the effect of the law; but you think that so far it is invalid?—Yes.

1166. You think the only person upon whom they could confer a fresh power of seizure must be some officer already constitutionally invested with it?—Yes; officers of police or officers of justice.

1167. You think they could not create an officer of justice, *pro hâc vice*?—No.

1168. Supposing your construction to be wrong, and supposing your officer had the power, even then it would seem that the Act itself is liable to this difficulty, that, if the Court happens not to be sitting for a certain number of days, the parties may be in prison nearly as long as the final sentence of the Court?—They might be in prison more than the eight days.

1169. (To Mr. *Dupré.*) You have heard what Mr. Godfray has said, as to the meaning o these words "seront saisis" by the Police. Do you agree with him in his opinion?—I think the harbour master is empowered by that Act to seize the parties mentioned in the second clause of the 18th Article, on their refusing to pay the fine incurred: and it follows of course, by the custom of the country, that they are entitled to detain them, with the sanction of the magistrate, till they can be presented in Court.

1170. That would also apply to the Police?—Yes.

1171. So that, in fact, as far as taking this man up and putting him into prison, if they had had the previous authorization of Sir John De Veulle, the proceeding would have been regular?—Yes.

1172. That is, without reference to the question of the expiration of the law?—Of course, if the law had expired, it would have been altogether illegal. I must also observe that, though the law should have expired when the party was seized, if a fine had been incurred while the law was in force, it would still have been punishable. The fine would still have been exacted, in virtue of an Act of States of the 18th of July, 1843, confirmed by Her Majesty in council on the second of October in the same year:—

"Considérant qu'il paraît, par un Acte du Corps de la Cour, du 18e Août 1837, qu'il a été jugé qu'une infraction à une loi ne peut être poursuivie après que la loi est périmée: les Etats, dans la vue d'assurer l'exécution des lois passées par les Etats, ont résolu, moyennant la sanction de sa Très Excellente Majesté en Conseil, d' établir le réglement suivant. Toute infraction à une loi passée par les Etats pourra être poursuivie et punie, même après l'expiration de la loi, pourvu que les poursuites aient été instituées, ainsi qu'il se pratique pour tous délits et torts, dans l'an et jour de l'infraction."

1173. Mr. *H. Godfray.* I wish to know whether the Solicitor General knows any occasion of the harbour master having seized a person?

1174. Mr. *Dupré.* The Act of States has not created a new office. The office of harbour master was created by a law confirmed by the King in council; and I think that the States could, by provisional ordinance, extend the power of the harbour master for the proper discipline of the harbour.

1175. Even to the extent of giving him a power to seize the person?—Yes.

1176. (To Mr. *H. Godfray.*) Have you an apprehension that, in cases where the Police are implicated, there is a difficulty in obtaining justice from the Court on account of the political constitution of the Court?—Yes; I have. There is hardly any chance of redress.

1177. By political constitution, you mean the political influence which the Police exercise?—The connection there is between the Police and the magistrates.

1178. The Commissioners understand that the party of the Police is not always the same party in the different parishes?—No.

1179. The Commissioners presume that, even if there is a strong political bias, it is not the

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same with all the Jurats. That some will have a political bias for the Police of one parish, and some for the Police of another?—There are only two or three magistrates on the bench of one party; the remainder are all of the other.

1180. Do you think the tribunal on the whole is influenced by party?—It is the Police which places them there; there is no regard to whether their abilities are sufficient to be magistrates.

1181. In the present case, the Commissioners observe that the Court dismissed the charge against Thomas upon the ground of some informality on the part of the Police. On this particular occasion, therefore, they did not favour the Police.—No; because it was so very clear and open.

1182. You observe that the force of the judgment is concentrated, as it were, upon the error of the Police, and avoids the question of the merits of the case. That looks not at all, as far as it goes, like partiality for the Police: they select that view of the case which tells most against the Police.—That is the reason given.

1183. Was your brother in law replaced as harbour master by Mr. Chevalier?—Mr. Lerrier, my brother in law, was harbour master about twelve years. That office was renewable every three years, by the appointment of a Committee of the States.

1184. Is it a lucrative office?—It is very much so, for Jersey.

1185. When did he cease to be harbour master?—A little more than three years ago.

1186. Against his will?—Yes. He was not re-elected by the Committee of the States. Mr. Chevalier had made sure of a majority more than twelve months before the time his office expired.

1187. Who succeeded your brother in law?—Mr. John Chevalier.

1188. The centenier?—Yes; he is both centenier et maître de port. My brother in law was turned out of office for no other reason than to make room for Mr. Chevalier, and to reward him for his great efforts as a partizan. Mr. Lerrier, in the election of Jurat, between Mr. Le Gallais and Mr. Arthur, voted for the former; and it was then decided that the harbour master should be turned out of office.

1189. You suppose that was the cause?—It is notorious. Mr. Lerrier had the approbation, during the twelve years he was in office, of all the merchants and shipowners of the place. He was recommended again to the committee by the greatest majority of merchants and shipowners.

1190. You were very much dissatisfied by that result?—Certainly; it was most unjust and iniquitous.

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Mr. Edward Nicolle, jun.

Mr. *Edward Nicolle, jun.*, examined.

1191. You live in St. Héliers, do not you?—I do.

1192. You are the son of a gentleman who is a Jurat?—Yes.

1193. I understand there has been some occasion, lately, in which you have been dissatisfied with the means of finding the Police when you wanted them?—On the occasion of a theft having taken place of some property of mine, I took into custody a little girl who had been accused of stealing coals and other matters, and I thought it advisable to apply to the Police. I am sure those gentlemen would have done every thing in their power, as they did ultimately, to do what was proper: but the first to whom I applied was engaged, and about to proceed on his own business to St. Aubins.

1194. He stated that as his reason for not acting?—Yes.

1195. What rank did that gentleman hold?—He was a centenier. The second to whom I applied informed me that he could not attend to the business, inasmuch as his coadjutor was absent from the island.

1196. His coadjutor in the Police?—No. That was the harbour master.

1197. His coadjutor in the duties of harbour master?—Yes; his deputy. The third to whom I applied informed me that he had all the duty thrust upon him; and he requested that I should go to the fourth.

1198. All the duties of the Police?—Yes. The fourth gentleman, as soon as I found him (I went to his house twice), immediately came and did the duties of his office.

1199. As I understand, the imperfection to which you wish to draw our attention is, not being able to find at the moment persons whose sole business it is to attend to that?—Yes; I am quite sure that the men who now hold the office are as efficient as any set of men could be under the present system. It is with the system that I find fault, and not with the persons.

1200. Do you contribute to a private police?—No.

1201. You know the fact, of course, that there are such associations in the town?—I believe there are several.

1202. In your opinion, do you consider the Police, as at present constituted, a sufficient defence for the lives and property of the inhabitants of St. Hélier?—No; I do not.

1203. I understand you to say that that inefficiency results from the system, and not from the individuals?—Decidedly.

1204. Have you had any opportunity, from your own knowledge, of observing how far party spirit of one kind or another influences their conduct?—I should rather say that the Police of the town parish influence the elections of almost all the Jurats.

1205. I meant, particularly, whether it influenced their conduct as police men; whether it interfered with their efficiency as Police.—I am not prepared to say any thing on that point.

Mr. *James Bolton* examined.

Mr James Bolton.
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1206. Have you been a long time a resident in this island?—I have.
1207. In the parish of St. Hélier?—Yes.
1208. In the year 1844 were you rated to the parochial rates?—Yes.
1209. At how much?—I was rated, a number of years, at eight quarters.
1210. Up to 1844?—Yes.
1211. Afterwards in 1845 was your rate increased?—Yes, to twelve.
1212. Between 1844 and 1845 did you part with any of your property?—Yes.
1213. Had you acquired any fresh property in lieu of it?—No; I had not.
1214. To whom did you sell it?—I sold it to an English gentleman, Mr. Morton.
1215. Have you had any opportunity of knowing at what Mr. Morton was rated?—Ten quarters.
1216. Upon that house solely?—Yes; upon the one house which I sold him.
1217. Upon your rate being increased, after your property had been diminished, did you apply to the Assembly to have your rate lowered?—Yes.
1218. Did they relieve you?—No.
1219. They still kept you at twelve quarters?—Yes.
1220. Soon after this, was there an election for a Jurat?—Yes.
1221. Did you vote in that election?—Yes.
1222. For which candidate did you vote? For the Police candidate or the other?—I voted for a person who was independent of the police body, that is, Mr. Arthur. He was brought forward by the Police.
1223. He was the favourite candidate of the Police, was he?—Yes.
1224. After having voted in this way for the candidate whom the Police favoured, did you apply to have your rate altered?—There was a public meeting.
1225. A Parish Assembly, I suppose you mean?—Yes.
1226. Was that the next Parish Assembly after the election?—Yes.
1227. Did you then apply to have your rate reduced?—Yes. I asked to have it reduced.
1228. What did they do?—They reduced it.
1229. To how much?—To six quarters.
1230. Do you happen to know how Mr. Morton voted?—He voted on the same side with me; and he was reduced to six quarters.
1231. Do you know whether Mr. Morton applied to be lowered?—No; he did not.
1232. Have you generally voted on the same side?—Never before. I never voted but once; and that was for Mr. Handley.
1233. When was that?—Thirty years ago and more. I cannot exactly say.
1234. For thirty years you had never voted till this election?—I never voted but once before.
1235. Have you engaged yourself on either side on any occasion?—No; I have never interfered at all.
1236. You had not given any promise to vote for either party?—Never.
1237. I suppose you had no knowledge that the vote you were giving would have this beneficial effect upon your rates?—I rather expected it.
1238. You had applied to the Parish Assembly, you say, to have your rate lowered; but they still kept you at the same amount?—Yes.

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*Mr. Philip Godfray* examined.

Mr. Philip Godfray.

1239. Your are a merchant resident in St. Hélier?—I am a merchant and banker in the town.
1240. Have you had any opportunity of judging of the efficiency of the police system?—I have.
1241. Will you state it?—If the Commissioners will allow me, the first thing I will speak about is as to Stephen Thomas. The Commissioners asked him whether he was rated, and whether he was a householder. At the last Parish Meeting, a few months since, he applied to me to get his name inserted on the rate list. I asked him whether he had sufficient property to pay the rate. He told me he rented a house of 15*l.*, and that he had sufficient property to pay it. At his request I proposed him.
1242. You are one of the principaux, are you?—I am one of the principaux of the town. The question was asked, "Who is Stephen Thomas?"
1243. In the Assembly?—Yes. I did not then know the man; and I said "He is here; he can explain what he is worth." Thomas came forward; and the moment he was seen by Mr. centenier Le Cronier, who is now dead, that centenier held up his fist and said, in French, "C'est ce bougre là: je propose qu'il ne soit pas admis." I propose that he may not be admitted. And the man was refused.
1244. That is the person who was assassinated?—The person was Mr. Le Cronier. To all those who composed the parish meeting he was known to be of a most hasty disposition, a most intemperate man. Three weeks ago, a Frenchman of the name of Fontaine came to my office to transact business. One of the clerks received from him a Jersey bank note, which he shewed me. It bore the name of Nathaniel Westaway. I looked at it, and immediately found that it was a forgery. That the bank note had been issued by a person of the name of Le Couteur, from twenty five to thirty years ago. The name of Mr. Le Couteur had been written with faint ink,

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and could hardly be made out. I asked Fontaine from whom he had received it: he told me that he had received it from a butcher in the market. I took the bank note; and, in my way to the market I met the son of Mr. Westaway. I told him that there was a forged note with his father's name in circulation.

1245. In what way did the note bear the name of Mr. Westaway?—It was originally issued by Le Couteur: that name had been erased; and the name of Westaway was upon it. I applied to Richard Le Lièvre, the butcher. He told me he had given the note to Fontaine, and that he had received it from a man of the name of George Bisson, residing at St. Saviour's. I returned to the bank, and gave back the note to Fontaine, who told me, a day or two afterwards, that Le Lièvre had returned him the amount. Last Saturday fortnight, Mr. Westaway jun. came to tell me that this note was again in circulation. I went a second time to Le Lièvre, who told me that he had returned it to Bisson; and, on my applying to Bisson, he mentioned having returned it to the party from whom he had received it, a man of the name of Le Riche. I had no time then to attend to the business; but, in the evening, I met Mr. Westaway jun., and told him: "Now, if you have time, we will go about this business." I returned to Le Leivre, to the market, and got the same explanation from him. I told Mr. Westaway: "Remain here; and I will go for the Police." I went to Mr. Mahy, who is a Police officer, and who keeps a wine and spirit store at some distance from the market. He was not there: but, a lad in his employment having pointed out where centenier Duparcq lived, I went to Mr. Duparcq's. We first of all went to a person of the name of Jukes, who had the bank note in his possession, who mentioned having received it from a party at a public house in exchange for five franc pieces, and that he would point the party out. He accompanied us to the public house. Jukes, the centenier and myself went; and it was found that Jukes had received it from a person of the name of Barrington. I went with the centenier to Barrington's house. He was not there; but they said he would be probably met with at the Divan, which is a public house in the town. In going from Barrington's house to the Divan, we again met young Westaway. He told me that, in the mean time, he had found the father of Mr. Gruchy, to whom Bisson had returned the note, and that they wished to settle the business.

1246. Was it young Gruchy, or the father?—Gruchy, jun. The centenier inquired of Gruchy were his son was; he told him, he did not know. Mr. Duparcq then told Gruchy: "Send your son to me on Monday morning." I left him, and have had no conversation with Mr. Duparcq on the subject since: but, two or three days afterwards, Mr. Westaway, the father, came to my bank; and he told me: "The matter is finished; they have repaid the pound to Jukes; and there the matter ends." Mr. Westaway observed: "Old Mr. Gruchy made a curious mistake: he told me, we are all on the same side; I am a police officer of Trinity; and the matter must be finished in that way:" or words to that effect.

1247. (To Mr. *Nathaniel Westaway*.) Did Mr. Gruchy tell you this?—Not exactly in the same form.

1248. Mr. *P. Godfray*. Mr. Westaway spoke in French. He is an Englishman. The conversation I had with Mr. Gruchy was in French. He is an Englishman, and not over well versed in French.

1249. (To Mr. *Westaway*). What were the words which were used, as far as you can recollect them?—He asked me to settle the business. I told him, as for myself, the note had not been presented to me for payment, and I had no wish to prosecute. He said: "Nous sommes de la police de la Trinité." I said, not comprehending what he meant: "Vous êtes de nos gens." He said "we are roides." The answer I made him was "il sera facile à arranger."

1250. (To Mr. *P. Godfray*.) Who would be the person upon whom the loss of the forgery would fall at the time of this supposed arrangement? You were not holder for value, were you?—No.

1251. Who was holder for value?—Jukes, to whom it had been passed a second time.

1252. Mr. *Westaway*. The note was cancelled. Mr. Duparcq called on me on Monday, and asked me where this man lived. He told me the thing was settled, and Jukes had had his money; and I told him I was very glad of it.

1253. Was Mr. Duparcq present at this conversation which you have been detailing to us?—No. I never saw Mr. Duparcq on the subject till he called on me on Monday morning, and told me it was settled.

1254. On what day was it that Mr. Duparcq informed you the thing was settled, and Jukes had had the money?—The Monday following, Mr. Duparcq came to know where the man who had had the note lived, as he owed him a penny, and he wished to return it.

1255. Mr. *P. Godfray*. That is to say, Mr. Gruchy gave one pound and a halfpenny to Mr. Duparcq for this note.

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Mr. Richard Duparcq.

Mr. *Richard Duparcq* further examined.

1256. Have you any thing to say to this?—Mr. Godfray came to me on Saturday evening about nine o'clock. He told me, I believe, that he had received this note first from Mr. Le Leivre, a butcher.

1257. When was this?—Saturday evening, about a fortnight ago.

1258. The point which the Commissioners wish explained is, your telling Mr. Westaway that this thing had been settled?—Mr. Westaway junior came on the Monday morning, with a young man. I still had the note in my possession, from the Saturday evening, and would not et it go.

1259. That was the son of Mr. Westaway, who has been examined?—Yes. Mr. Westaway junior told me that every thing was settled with his father; that he would not prosecute the young Gruchy; and then I spoke to the young Gruchy, and asked him where he had got the note. He told me that he had received it of a person whom he did not know. I could not find who had given him this note. I asked him whether he would repay it again, and destroy the note.

1260. Asked whom?—Gruchy, the one who had had the note in his possession.

1261. You asked whether he would pay the amount of the note to Jukes?—Yes.

1262. And destroy the note?—Yes. I told him, as Mr. Westaway did not wish to prosecute him any further, I would destroy the note in the presence of Mr. Westaway and Mr. Gruchy.

1263. Did you do so?—I did, in my own house, in the parlour. We had a candle, and destroyed it in the candlestick before Mr. Westaway and Mr. Gruchy.

1264. How long have you been a police officer?—Going on three years.

1265. When did this take place?—About a fortnight ago.

1266. Mr. *P. Godfray.* Last Saturday fortnight.

1267. (To Mr. *Duparcq.*) Is Mr. Gruchy senior a rate-payer of St. Helier's?—No; of Trinity parish.

1268. Do you know at all of what party he is?—No. I had never seen the man before, to my knowledge.

1269. Did it occur to you that what you were doing, in burning the note, was improper to be done by a constable?—Not at all, as I could not trace any further than that Mr. Gruchy told me he had received a note, but he could not say who had given it to him.

1270. He offered to pay for it?—Yes, and paid for it; at least his brother did. Gruchy is quite a young man, about nineteen or twenty.

1271. Did not you take a particular oath when you were appointed centenier?—I did.

1272. Do you recollect the terms of that oath?—Yes; but Mr. Westaway sent his son, saying he did not wish to prosecute the man any further.

1273. Do you consider, acting as a police officer, that a public offence is a question between two parties?—I did not know what party he was.

1274. Do you think, if a man robs me, and I let him off, the public has no interest in the crime?—Certainly they have.

1275. Did not you swear in your oath, "Vous garderez et ferez garder la paix de sa Majesté, vous opposant et saisissant de fait tous mutins, séditieux, larrons, homicides, et toutes autres personnes qui interrompent le cours de la paix publique, dont vous informerez le connétable, afin qu'ils soient présentés en justice." If any crime takes place, is not it your duty to present the parties in Court? Did that never occur to you?—Never.

1276. You are aware that, if you had gone to Mr. Le Sueur, you could have had the best advice possible?—I did not go to him.

1277. He never heard of it, of course?—No: a thing of the kind had never occurred to me before.

1278. Mr. *Le Sueur.* From time to time those notes signed Le Couteur have found their way into circulation; and they have been issued again without people knowing that they are forgeries. There is no reason for suspecting Gruchy of having issued the note knowing it was forged.

1279. Supposing he had received the note from the most respectable man in the island, the question is not as to the respectability of the person, but as to destroying the evidence of the crime.

1280. Mr. *Le Sueur.* Mr. Duparcq very likely did it to prevent its being circulated again.

1281. Mr. *Duparcq.* That was my only motive.

1282. Mr. *P. Godfray.* Mr. Duparcq states he had been centenier three years: I believe he has been a police officer for many years.

1283. (To Mr. *Duparcq.*) Is that so?—Yes.

1284. Did you call upon Mr. Westaway the next day, and say that the matter had been settled?—I told him on Saturday. I told him what Mr. Westaway had stated, that I could not trace the note any further than Gruchy. He told me he had received it.

1285. You thought, seeing the instrument in the hands of a person whom you could not suspect personally, it did not signify what became of the instrument?—I never gave a thought about that. I thought, when I had the note, and Mr. Westaway would not prosecute any further, I could destroy the note.

1286. Upon meeting old Mr. Gruchy, he was asked where his son was?—I asked him where his son was: he said, he did not know.

1287. You then said, tell your son to come to me on Monday morning?—Yes.

1288. Did he come to you on Monday morning?—Yes.

1289. Then this meeting took place?—Yes.

1290. Who were present?—Mr. Gruchy, the brother, and the young man himself, and Mr. Westaway junior.

1291. Did you examine the young man as to how he came by the note?—Yes: but he said, he could not tell; that some one had given it to him, but he could not tell who: and I thought it was better to destroy the note than to let it circulate any longer.

1292. Mr. *P. Godfray.* I do not know whether the Commissioners understand me right. The note was returned, in the first instance, to Gruchy. He was told the note was forged, and, after being told of it, he reissued it a second time.

1293. Did you mention that fact to Mr. Duparcq?—I do not recollect whether I did so or not. I told Mr. Duparcq that the note was forged; and Mr. Duparcq knew it well.

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Mr. Richard Duparcq.

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1294. Mr. Duparcq was in the position of knowing that the note was forged, and of finding the last person, who says, I cannot account for it?—Yes.

1295. In what part of St. Hélier's is your office?—In Hill Street, eighty or one hundred yards from here.

1296. Have you any thing to add to your previous evidence?—Yes. Three or four years ago, I was informed that a lad had entered my premises, and had stolen a few bottles. I told the lad that I would forgive him if he would shew me where he had sold them. He took me to a little broker's shop in Hillgrove Lane, kept by a Mrs. Joste. The boy insisted that he had sold her the bottles; but Mrs. Joste denied it. I sent for vingtenier Durell. He is no longer in office. I sent for him: and he came. Some explanation took place as to those bottles; and it was found out that this woman received a good deal of stolen property.

1297. Were the particular bottles found?—Yes. It is very difficult to swear as to bottles.

1298. Bottles were found, which you stated you suspected to be yours?—Yes. There was a grate which she mentioned having purchased from an apprentice of this town. The master and apprentice were sent for. The boy, in my presence, owned having stolen the property from his master, and that he had robbed him to some amount. Vingtenier Durell said, that it was a very serious business, and he would not take upon himself to arrest the parties, but sent for centenier Le Cronier. I mentioned to him what had taken place. The two boys owned that they had stolen the property which was in the shop; and I insisted that he should do his duty. The lad who had stolen my bottles was an English lad; the boy who had committed the other thefts was a Jersey boy. The English boy was committed to gaol; and the Jersey lad, who in my opinion was ten times more guilty than the other, was let go. The English lad was brought before the Court. I was present when he was tried. I mentioned to the King's Procureur that he was not the only one who ought to be there; but I refused to tell him what I knew about it, and referred him to the centenier, or to the constable: he spoke to the constable, who had not been made aware of the circumstance.

1299. To Mr. Le Sueur?—Yes; Mr. Le Sueur left his place at the bar and spoke to Mr. Le Cronier; but what passed between them I do not know. The Court took into consideration that the English lad had already been in prison for a few days, and let him off. As to the other boy, nothing was done.

1300. Have you any other point to which you wish to advert?—Yes. In September, 1843, a person brought me a cheque for 100*l.*, which I sent up to London for payment, but it was returned.

1301. A cheque on a London banker?—Yes; on the house of Williams, Deacon, and Co. I gave it back to the party.

1302. Was it returned "no effects?"—No; they never give an answer as to cheques; they simply refuse them; and there is an end to it. I gave it back to the person from whom I received it; but soon afterwards I found that the cheque was a forgery. I went to the centenier Darthenay, who was then in the office, and apprized him of the circumstance. He went with me to the party; but he had destroyed the cheque.

1303. The party had?—Yes. He however took him up, and put him in gaol; and, on searching his papers, it was found that he had a forged letter of credit in his possession. I wrote to the banking house of Williams, Deacon, and Co. respecting that letter of credit; and they informed me that they had not given it, although it bore their name. The proof was positive, in my opinion, against the man; but, to my great astonishment, he never was brought before the Court; but, on the contrary, after being kept six days in gaol, he was liberated by Centenier Darthenay, and not by an order from a magistrate, although he had been committed by Mr. Le Gallais, a magistrate.

1304. (To Mr. *Le Gallais.*) In your commitments, do you specify what the parties are committed for?—Yes.

1305. Do you remember what this person was stated to be committed for?—No.

1306. Mr. *P. Godfray.* It is in September, 1843.—My reason for bringing this case before the Commissioners is to show that the Police have, or claim to have, the right, after a person is committed for forgery, of liberating him without the consent of a magistrate.

1307. The prison book under the head of "by whom seized," says "Centenier Darthenay;" "By whose order;" "Mr. Le Gallais." "Date of trial;" blank. "Sentence;" "Liberated." "By whose order;" "Centenier Darthenay."—Yes: and the man paid 3*s.* for gaol fees.

1308. *The following entry from the Gaol Book was read:*—

CONTINUATION of CRIMINALS in HER MAJESTY'S GAOL at JERSEY, 1843.

| No. | Criminal's Name. | Of what Country. | Age. | Accusation. | Where Committed. | By whom Seized. | Date of Confinement. | By whose Order. | Date of Trial. | Sentence. | Date of Discharge. | By whose Order. | When taken before the Court. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 181 | John Frampton | England . | 21 | Forgery . | St. Héliers | Cent. Darthenay | Sept. 7 | P. Le Gallais | | Liberated | Sept. 12 | Cent. Darthenay. | |

1309. Did you mention the case to the Crown officers?—No.

1310. (To the *Vicomte.*) Perhaps you would know, as having the gaol under your charge, whether a centenier, or constable, or any other officer of police, has the power to direct the liberation of the person confined?—I do not know that they have the power: they exercise it.

1311. It is exercised, and obeyed by the gaoler?—Yes.

1312. It would be regular, according to practice, that the gaoler should dismiss the man upon the order of centenier Darthenay?—Before he is presented.

1313. Mr. *Le Sueur.* I believe it has been the practice for the police officer, either the centenier or the constable, to give an order to liberate the party when the charge was not sufficiently substantiated; but in 1844 the Prison Board gave directions to the gaoler that all orders for the liberation of prisoners were to be signed by the committing Magistrate or the Bailiff.

1314. The subject has been brought before the Prison Board?—Yes.

1315. Sir *John De Veulle.* I have given orders to the gaoler in writing upon the subject. They are sent for; and they will be produced to the Commissioners. Mr. Le Sueur says they are the orders of the Prison Board. I thought they were my own orders. I have sent the gaoler for them; and they will be here shortly.

1316. Mr. *Le Sueur.* The subject was mentioned before the Prison Board; and I understand that an order was then made to that effect.

1317. Was that in 1844?—Yes: it was in 1844 or 1845.

1318. You mean that the practice was for the centenier or the constable to judge of the sufficiency of the charge?—Not, of course, to judge of the sufficiency of the charge without consulting the Crown officers, and at the same time the Magistrate who had committed the prisoner; but generally the order was not signed by the Magistrate, nor was it given in writing, but given verbally by the centenier or the constable to the gaoler.

1319. A discretion to liberate rested with the constable or the centenier, guided by the advice of the law officers?—I understood so.

1320. So that it would be irregular in a centenier, before this order, to direct the liberation without consulting the law officers?—I do not suppose that any centenier, if the charge had any gravity, would have liberated the party without first consulting the Crown officers.

1321. The question of gravity or no gravity would be of course then a question for the centenier?—Yes; that was the case previously to the order. It occurs to me that the Prison Board made an order to that effect. I know the subject was discussed before the Prison Board; and I believe an order will be found to that effect.

1322. The *Vicomte.* The last liberation made by a centenier was on May the 7th, 1844. Therefore I have no doubt that Mr. Le Sueur is correct as to his date.

1323. Mr. *Le Sueur.* I suppose, if the Magistrates who have had committals are asked, it will be found that before that time their order was not required.

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Mr. *Philip Godfray* further examined.

Mr. Philip Godfray.

1324. Will you proceed with your statement?—At the last parish meeting of the parish of St. Héliers, of which I am one of the Principaux, a person named Mr. Philip Haia was present. He applied to be rated as one of the principaux, that is to say, to pay twenty quarters on the rate. He had been a rate-payer for many years, and I believe was taxed at twelve quarters. A proposal was made to admit him, and an amendment to reject him; but he was not admitted. The whole of the police officers, who came there with the intention of not admitting persons who voted for the Laurel party, voted against him.

1325. Mr. *Le Sueur.* I can state positively that that was not the case.

1326. Mr. *P. Godfray.* Nearly all those that were proposed by the Laurel party were rejected by that very same Police. I hold in my hand a list of forty seven individuals who paid a lesser rate than twenty quarters, who had voted for the Rose candidate at the previous election, and who were admitted as Principaux, while only eight individuals who had voted for the Laurel party were admitted, and four or five who had not voted were also raised to the rank of Principaux. I find that there are twenty two persons on the rate list at fifteen quarters in the parish of St. Héliers. Five are minors; two electors did not vote; two were out of the island; and thirteen voted for Mr. Mallet; that is the candidate of the Laurel party: and only two persons that were rated at fifteen quarters voted for the Rose party. It is obvious that those thirteen persons are kept at fifteen quarters that they may take no share in the parish meetings. I must observe that I have not the rate list; and perhaps there may be some slight difference: but that can always be rectified by the person in whose possession the rate list is.

1327. You say that twenty two persons were rated at fifteen quarters: do you happen to know whether those parties have a property sufficient to entitle them to be rated at twenty quarters?—I should say, the greatest part of them. Soon after the election of Mr. Le Gallais as Magistrate, there was a rectification of the rate.

1328. Does what you are stating now refer to the last election?—I refer to the rate of the present year. At the time of Mr. Le Gallais's election in 1843, there were nearly 1500 rate-payers in the town. Mr. Gallais gained his election by ten or eleven votes. Shortly after, a rectification of the rate took place.

1329. How soon was the rectification of the rate after Mr. Le Gallais's election?—It was about a month.

1330. Was that for the same year?—The same year, and the following year. The rate list was increased by 300 votes. The greater part were brought in by the Rose party. They refused to admit those that were proposed by the Laurel party. By that means, they have increased the number of their voters; and at this moment, I do not see that any Laurel candidate has the least chance of being elected; but the Police of St. Hélier's have the elections entirely in their own hands. When a party offers to be rated, if he is known to be of the Laurel party, he is very seldom admitted. On the other side, whether he has means or not, if he is proposed by the Rose party, he is sure to be put on the rate list. It is said to be one of the greatest privileges of the island to elect their Magistrates; but that power is entirely in the hands of the Police. At the last election, in last November, there voted for the Laurel candidate ninety seven Principaux.

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Mr. Philip Godfray. 10 September 1846.

1331. What was the election for?—For Jurat. For the Rose candidate eighty five; which shews that there was a majority of the Principaux in favour of the Laurel candidate. I find that sixty voters rated at one quarter voted for the Rose party, seven voted for the Laurel party, and eighty eight paying two quarters voted for the Laurel party; which leaves a majority of one hundred and eighteen voters paying two quarters in favour of the Rose party. Those persons are most of them placed on the rate list to have their votes at elections.

1332. In fact, the richer party are in the minority?—I do not say, the richer party; but I say that there was a majority of twelve Principaux in the last election, and that forty seven Principaux have been added since to the Rose party, while only seven or eight have been added to the Laurel party.

1333. Can you give us the number rejected?—It was not I who took the memorandum; it was taken by a gentleman who can be brought before you.

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Mr. Peter Le Sueur.

*Peter Le Sueur*, Esq. (Advocate), examined.

1334. I have found the note in Millard's case, which was alluded to yesterday, and also the Report which would have been presented in Court if the Attorney General and myself had thought there was sufficient ground for the accusation. I mention it, as I refused to give the note up to Mr. Bromer this morning, before having produced it to the Commissioners. Mr. Bromer stated that the statute of limitations had barred the recovery of the bill since the time the complaint was made to the police.

1335. Mr. *Bromer*. Since the time it was torn.

1336. Mr. *Le Sueur*. I have the note; it is dated, Jersey, May 14th, 1830. It is payable one month after date.

1337. Therefore in June 1840 it would be gone?—Yes. Mr. Bromer's complaint was lodged on the 23rd of November, 1841. Perhaps I had better read the commencement of the Report which was intended to be presented.

"A Messire Jean De Veulle, Chevalier, Bailli, et à Messieurs les Jurés Justiciers de la Cour Royale de l'île de Jersey. Mardi, le 23 Novembre, 1841. Mr. David Bromer me porte plainte qu'étant porteur d'un billet à ordre, contenti, le 14 Mai 1830, par Eliza Ormond et E. J. Millard, à Elias Gaudin ou ordre, et payable un mois après date, de la somme de vingt six livres deux chelins, monnoie de la Grande Bretagne, et endorsé Es. Gaudin, il avait chargé Mr. Charles Dupont d'en demander paiement; que ce dernier s'étant rendu chez Mr. Henry Millard, ainsi que sa femme, qui avait signé le dit billet sous le nom de E. J. Millard,"—

I did not write any further. I mentioned the case to the Attorney General; and he was of opinion that there was no ground for an accusation against the party.

1338. Mr. *Bromer*. I applied at Mr. Le Sueur's office, yesterday morning, to have the document returned to me. I was referred to the Court; where, of course, he was occupied, as he generally is, as an advocate, through the middle of the day. When I saw him in the evening, he said, I must come in the hours of business. I asked, what hours they were; and he said, the hours to apply at his office, as constable, were from nine to four. The consequence of which is, if those are the hours, the public will very seldom find him at home.

1339. The police hours you were told were from nine till four?—Yes, that those were the hours during which to apply on public business.

1340. *The following Order was produced to the Commissioners by Sir John De Veulle, and read:—*

"20th May, 1844.

"The Board has charged the gaoler with respect to debtors. 1. Not to allow an entry to be made on the Register of prisoners, but of such persons as shall be delivered into his custody, that is to say lodged in gaol. 2. Not to allow the discharge of any debtor without having previously received an order in writing to that effect signed by the officer of justice who shall have made the arrest; the discharge shall be immediately entered on the Register for prisoners. With regard to Criminals: To discharge no prisoner who shall not have been presented at Court, unless it be on receipt of an order to such effect, signed by the Chief Magistrate, one of the Lieutenants Bailli, or a Magistrate empowered by the Bailli. J. Le Couteur, Viscount.

"The only magistrates empowered to sign orders for committals or discharges, are Lieutenant Bailli Marett, Lieutenant Bailli Bisson, and Judge Le Gallais.

"Signed, J. De Veulle, Bailli.

"St. Héliers, 21st. May, 1844."

Adjourned to to-morrow at ½ past ten o'clock.

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*Friday, 11th September*, 1846.

Mr. John Chevalier. 11 September 1846.

Mr. *John Chevalier* examined.

1341. You are centenier of this parish?—Yes; and Harbour Master likewise; as Mr. Godfray explained to the Commissioners yesterday.

1342. Have you been present in Court while the evidence touching the Police of the parish of St. Hélier's has been given?—I have, several times. I happened to be in the room when Mr. Dupré, the Solicitor General, began; and I was called away.

1343. Do you wish to make any statement on the evidence which has been given?—I do, in the case of Thomas. I think Thomas related the thing, as far as I can recollect, pretty correctly, except one thing. He said, I told him that he might go to dinner.

1344. Were you present all the time that Thomas was examined?—I think I was. Thomas was plying without a license.

1345. You took him in the first instance to prison, did not you?—When I met him on the pier, I told him I would go to his house.

1346. Did you go?—I went in the afternoon twice or three times; he was not at home.

1347. It was on the same day that you asked the 2*s*. 6*d*. of him?—Yes; I had repeatedly told him not to come without a license with his van taking luggage.

1348. You did not find him at home on the day that you called?—I did not. I think I found him the next day. The next day, when I went to his house, I asked him for the money or for bail. He told me he would give me neither of the two. Then I told him that of course I must seize him, and put him in gaol. "Very well," he said, "I am willing to go; that is what I want."

1349. Was that at his house?—No; I think it was in the street.

1350. Where did this conversation take place?—I think it was in the street; but it was so long ago, that I cannot very well remember. I think it was in Grove Place, near Dr. Dickson's house.

1351. He said he would go to prison, for that was what he wanted?—Yes; that that was what he wanted.

1352. And you took him to prison?—Yes; I took him to prison.

1353. At the time you took him to prison, had you, or had you not, the authority of Sir John De Veulle to take him there?—No; I had not.

1354. Is it the habit for the police to put people, when they are charged with crime, in prison, and afterwards to obtain a sanction from the Bailiff or one of the other Magistrates who are authorized to commit, subsequently to their putting them in prison?—I have never applied for a committal till after the person was in gaol.

1355. Did it ever occur to you to ask the constable, who of course is a gentleman much better acquainted with the law than you can be?—No; I do not think I have. I had served under the constable previous to Mr. Le Sueur; and I never have done so.

1356. You were centenier before Mr. Le Sueur was constable?—Yes.

1357. How long have you been centenier?—The inhabitants have elected me, I think, four times.

1358. How many years have you served?—It must be about ten years now, I should suppose.

1359. During the whole of that ten years you have always pursued this course of first imprisoning, and then getting an authority?—As soon as possible, I always made it a duty. I think the gaoler will always say I have always been very punctual in getting the committals.

1360. Did you ever hear, from either of the constables under whom you have served, that you were doing an act which in strictness was illegal?—Never.

1361. Did you ever confine any person charged with a crime in your own house, or in a public house, or any place except the prison?—No. I have been centenier many years; and my father filled the office of centenier: and I never heard that he did. We had a guard-house at one time.

1362. Is there a guard-house now?—Yes; it was formerly a guard-house; till within a year we have used that; some soldiers were kept there in war time; but, since the peace, it was left to the police to incarcerate drunkards, or detain people there.

1363. During the time you were centenier, was this place in existence as a guard-house at any time?—Yes.

1364. How long has it been applied to its present purpose?—Not above a year.

1365. You say that, till within a year, there was a place in which you could confine people charged with crime?—Yes.

1366. During the existence of the guard-house, and while it was capable of being applied to that purpose, did you take your prisoners thither or to the gaol?—I have very frequently placed them there; and at other times, when they were drunkards, and I was afraid of keeping them there for the whole night, fearing something would happen, I sometimes took them to the hospital; or, if they had been drunk and had committed a crime, I took them to gaol; and then the turnkey stopped with them the whole night, fearing they might injure themselves.

1367. Do I understand you to say that this place was up to a year ago specially appointed for the use of the Police?—The Police made use of it.

1368. Under whose authority?—We centeniers generally had a key.

1369. By whose order was that done? Was it by order of the Court?—No; we took it upon ourselves. I have done it frequently in the presence of both the Attorney and Solicitor General.

1370. During the existence of this place, did you always put people who were charged with crimes into this place of which you had the key, or did you take them to gaol, or to the hospital?—Sometimes I took them there, when I thought there was no crime. If it was only drunkards I picked up, I left them there till they were sober; and, if they promised to behave, I let them loose. At other times, when there was a crime, I took them to the gaol or to the hospital.

1371. So that you used the guard-house to confine drunkards and riotous people in; but, when they were charged with crime, you took them to prison or to the hospital, and afterwards procured the sanction of a Magistrate to do so?—I have not always done so when I put them in the hospital.

1372. When you put them in the hospital, under whose charge where they?—There is a governor of the hospital. I went there the next morning; and, if there was not sufficient ground to put them in gaol, I let them at liberty. If there was, I put them in gaol.

1373. In all cases of crime, you took the people to gaol?—Yes; in cases of robbery, or breaking into houses, or what not, I always took them to gaol.

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1374. Is there any book kept, either by the constable or by yourself, for entering the names of people who are taken up?—No; not that I am aware of.

1375. Of course you would be aware of it if there were such a book. Do you keep such book yourself?—No.

1376. Do you keep books?—I have kept extracts or copies of the Report, when there was something of consequence that I wished to refresh my memory before I came to depose in Court, as they would not let us take notes to bring them into Court. I have read them over in the morning, before they went into Court.

1377. What I ask you is, whether a list is kept by yourself or any body else of all the people taken up for any police charge which happens from day to day?—I am not aware that there is.

1378. I think we may pass from Thomas's case. There is no great difference between your statement and his?—Only he says that I discharged him, which I never did.

1379. Ultimately he was dismissed by the Court?—Yes. One reason was because I did not put something in my Report. My Report remained all the time in the Attorney General's hands; but I did not think it necessary, because he went away and I never saw him till he came back that day.

1380. The act of Court, which you have probably seen, states that Stephen Thomas was discharged because he was informally brought before the Court, your Report containing this informality, namely, that it omitted mention of the previous discharge, and treated him as if he was in custody on the original caption. That you do not agree to, I understand?—No; I never discharged the man. I considered him to be still in my custody.

1381. Would it be possible always to find the Chief Magistrate to obtain from him a committal before the person is lodged in gaol or the hospital?—Last night I was called, about eleven o'clock. A woman came to me, without shoes or stockings, and holding two children in her arms, and begging of me to go to her house, as her husband, she was afraid, had murdered one of the children; that he was mad. I went down to the house with the police officers, and found the man there. After what passed yesterday, I did not know whether I was justified in seizing the man. The man was in the room, cursing and swearing and dancing; and, the moment that he heard we were coming, he shut the door; and we had great difficulty to get in. After what passed yesterday, I thought proper to go first to Mr. Judge Le Gallais. I rang the bell for a quarter of an hour. I suppose I rang it seven or eight times. I then went to Sir John De Veulle with this man and the Police Officers; and Sir John was not at home. I did not know what to do; but I left him in the lodge; and he is there now.

1382. In the lodge of the hospital?—Yes.

1383. The question yesterday was not as to the right of a centenier to seize a person in case of a breach of the peace, but as to his right to put him in gaol before a Magistrate's warrant was obtained for so doing?—What was I to do in this case, which has happened not only once but hundreds of times in my experience?

1384. Is there any other case you wish to mention?—With respect to the practice, without boasting, I may say that I do not think that there has been an officer who has ever put as many into gaol as I have. I think, now, that there are not less than forty I have seized, who have been sent over to Botany Bay.

1385. Do you follow any other business besides that of Harbour Master?—I am an iron merchant, besides, in company with my son.

1386. You are an iron merchant, and the Harbour Master, and have been centenier for the last ten years?—I think it is about ten years.

1387. Where do you live?—In Don Street.

1388. I suppose you have applications made to you at all times of the night, have not you?—I have sometimes left my house seven times in a night, and very frequently four and five times. Sometimes there might be a month without a single call.

1389. Is your office of centenier totally unpaid?—I do not receive anything for it. The inhabitants have, for my activity and conduct, voted me a piece of plate by voluntary subscription.

1390. You do not receive any fixed payment for it?—No; I never received a farthing, and never asked for it. I have been offered some; but it is a thing I have always refused.

1391. I need scarcely ask you whether the office of centenier does not materially interfere with your private avocations?—Yes; but, thank God, I have the means to do it; and for the good of my country I have done it. It was the wish of the inhabitants that I should.

1392. Do I understand you rightly, that, in this town of St. Héliers, the only places of confinement you have are the gaol and the hospital; that the Police are totally without any place in which to detain an offender?—Those are the only places that I know of; and I know the town, I think, as well as any body.

1393. What is the hospital? A poor-house?—Yes.

1394. Is it a house for the reception of sick people?—Yes.

1395. Where are those people you take placed in the hospital? Is there a place appropriated for people brought by the Police?—There are three lodges in one part of the hospital, where they are generally put if they are drunk.

1396. By lodges you mean cells?—Yes: there are three or four; I think four.

1397. They are kept for the purpose of detaining people who are put in by the Police?—Yes: since the guard-house has been taken away, the Police generally take them there.

1398. When they are put into those cells, are they placed under the care of any police officers?—No.

1399. Does any member of the Police remain in the hospital to be applied to in case of necessity?—No.

1400. In whose custody are they? They are locked up, I suppose?—They are locked up in their cells.

1401 Who keeps the key?—The governor, I expect, or one of the turnkeys. There is a turnkey comes; and sometimes the governor of the hospital.

1402. By turnkey, do you mean an officer belonging to the gaol?—Yes; the person appointed there, I suppose by the Hospital Committee: I should suppose he is.

1403. (To Mr. *Le Sueur.*) Who appoints the Committee of the hospital?—The States.

1404. Is the Committee of the hospital a part of the States, or is the whole of the States the Committee?—A part of the States. The Committee is named by the States.

1405. I understand that the States appoint a Committee for the management of the hospital?—Yes, consisting of nine members.

1406. Have they the power of appointing the officers of the hospital?—The States appoint the Governor, and also the Governess, the Surgeon and the Chaplain; and the Committee appoint the other officers.

1407. Of course it is with the sanction of the Committee that the hospital is used for the purpose of confining people who are charged with police offences?—It is with the knowledge of the Committee; and I believe a part of the hospital has always been used for that purpose.

1408. Is any particular person appointed by the Committee of the hospital to have the charge of those people who are so confined?—No; there is a doorkeeper or porter.

1409. Then, in point of fact, they are in the custody of the officer, who is the porter of the Hospital?—They are in custody of the Governor; but the porter keeps the key.

1410. Does the Governor, *ex-officio*, hold any police authority? Is he, from his office as Governor, a member of the Police?—No. Within the walls of the hospital of course he has the control.

1411. He is not a member of the town Police?—No.

1412. Is there any book kept at the hospital for entering the names of people who are confined there?—Yes.

1413. In that book are the police cases inserted?—All persons who enter the wards of the hospital. Their names are always entered in that book; there is no separate book for those brought there by the Police; their names are all entered in the list of inmates of the hospital.

1414. Would the names of the people who are brought by the Police be entered?—They would, of course. In some cases, where people have been brought there only for a night, such as drunkards, very often their names might not be entered in the book.

1415. Do I understand you that any special directions are given by the Committee of the hospital to the Governor with regard to police cases?—The regulations are printed; but I do not recollect any instructions to that effect.

1416. (To Mr. *Chevalier.*) You say that the parties who are taken up for trifling offences are sent for security to the hospital, there being no other proper place in which to put them. Parties for serious crimes are taken straight to gaol?—Yes. Very often I have not got the key of the gaol with me at night; it is impossible for me to make the gaoler or any of the turnkeys hear; so I go and ring the bell of the hospital, and place the people there till the next morning.

1417. Besides those people who are brought up for police offences, people for serious crimes are lodged in the hospital for the night when it is too late to take them to gaol?—If it was a very serious case, I have the key of the outside gate of the gaol; and I should come home for the key, and go and put them in the cell at once.

1418. If a man is taken up for drunkenness in the street, you would put him into the hospital?—Yes.

1419. What becomes of him next morning?—I should go and see in what state he is; and, if he is fit to go home, I should admonish him, and tell him to go home.

1420. Is not he brought before any Court? Supposing a case of drunkenness, should you think it necessary to bring such a case before the Court?—No.

1421. Suppose two men were fighting in the street, what would you do in that case?—Most likely, if I knew the aggressor, I would put him in gaol, and present him before the Court; it would all depend upon circumstances. If a man had ill treated another very much, then of course I should put him in gaol.

1422. For what cases do you put people in the hospital? Will you mention some of the cases?—For no cases, but where it is not worth while troubling the Court with them.

1423. Do you exercise a discretion as to what should go before the Court or not?—I have done it.

1424. Do you exercise that discretion without first making a Report, either verbally or in writing, or consulting the constable, or Attorney or Solicitor General?—I have, in some cases, consulted the Attorney General, who has told me it was not worth while.

1425. Do you ever exercise your own discretion at all without consulting the constable, who is your superior officer, or the Attorney General?—If I have any advice to ask, I generally go to the Attorney General.

1426. What is the course you take? In all cases do you take the advice of the constable, or the Attorney or Solicitor General, if the constable has not satisfied you? Or, in some cases, do you exercise your own discretion?—In some cases, when it is for a trifling offence, such as drunkenness, I generally act upon my own discretion. Sometimes I have gone to the Attorney and asked his advice, and he has told me it is not worth while, and I have let him loose again.

1427. Do not you in every case make a Report to the constable of every thing that occurs?—No.

1428. Not day by day?—No.

1429. If you were obliged daily to make a list of all parties whom you apprehended for any offence, and take it to the constable, and receive his instructions upon it, and then proceed to

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deal with the parties as you were directed by the constable or by the Attorney General, would not that take up a very great deal of your time?—It would so, if it were done. For a week sometimes there is not a police case; sometimes not for a month; and at other times there are a great many.

1430. Does a month go by without any drunkenness in the streets?—We do not see all the drunkards there are.

1431. You do not look after all of them?—Generally, when they know I am coming in the way, they get out of it.

1432. What do you do with prostitutes and loose women walking in the streets?—I generally put them in the hospital, and bring them before the Court.

1433. Do not cases of that kind every now and then occur?—Yes.

1434. Frequently?—Yes. I have sometimes brought up half a dozen, and even nine or ten of them.

1435. If you had to make a Report of all of those cases, would not it sometimes occupy a great deal of time?—It would.

1436. Do you wish to make any remarks upon any other evidence which has been given?—That is the only one I heard. I was not here all the time that Mr. Dupré was being examined; but I was here when the first question was put to him as to how the Police of the island were chosen. He spoke of some of them being publicans. From what I know of those police officers who are publicans, they are spirit merchants; and the law will not allow them to retail a smaller quantity than a pint and a half; so that they are obliged to have a license to retail by the pint. They have no table: they do not sell liquor to drink in their house. There is not one in St. Hélier's who keeps a table and glasses for the retail of liquor.

1437. The Commissioners understood Mr. Dupré's evidence to apply rather to some of the Police who were merchants furnishing some of the taverns with spirits. Do you happen to be yourself a person who has taken an active part in the different political disputes which agitate this island?—Yes; the same as the Messrs. Godfray.

1438. Only on the other side?—Yes: that is all that there is between us, I suppose.

1439. As matters are conducted here, does your office of centenier enable you to be of considerable use and importance to your party?—No. I am rated at sixty quarters in the parish; and I have voted in the parish meetings just the same. Some people put me down as having a vote as belonging to the Police; but I have a vote besides that.

1440. Does your office of centenier enable you to be generally of use to your party? I do not mean to say by giving you the right of voting; but is it an office which it is advantageous to the party to have one of its members fill?—Not to me.

1441. Is it to your party?—I do not know whether it is to any others. I can only answer for myself.

1442. Of course you were elected to your office of centenier?—I was. I did not seek nor ask for it. The inhabitants elected me. It is very true, they have tried to get up an opposition to me; and, I think, the last time the opposition candidate had eight votes and I had more than three hundred.

1443. When you became centenier it was by election?—Yes; but I had a vote in the parish meetings before that.

1444. Was not your election a party election?—I do not think it was.

1445. Was there any body opposed to you?—Yes; there was a next-door neighbour of mine; and he had three or four votes.

1446. Then you were elected comparatively without opposition?—There was a trial: it was nearly unanimous; it was only to say it was not unanimous. Every time I have been elected, there has been one put forward that I might not be elected unanimously.

1447. Do I understand that you have been always elected and re-elected without opposition?—I cannot say it was without opposition; there was always one. I really believe that there was one put up that I might not be said to be elected unanimously.

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Mr. Peter Le Sueur.

Mr. *Peter Le Sueur* further examined:

1448. I believe you are constable of the parish of St. Hélier's?—I am.

1449. When were you elected?—I think it was in November, 1839.

1450. The office of constable in town is a triennial election, is not it?—Yes; I have been elected without opposition; or, at least, with the exception of one or two votes.

1451. You have been twice re-elected?—I have been twice re-elected.

1452. To what extent are the officers of inferior rank subject to yourself? Have you the power of saying to a centenier, "You ought to have done this or that"?—I have the power to say so; but I have not the power to suspend, or remove them from office.

1453. Have you the power to compel them, in case you suggest any particular mode of attending to complaints, or watching the streets, to take your views?—If I required the assistance of a police officer, and he refused, I could make a report of it before the Court; but I know of no case where a constable has presented a report against a police officer for mere neglect or dereliction of duty.

1454. Have you, as head of the Police, any means of compelling the officers to act upon your views? For instance, if you had taken a particular view upon any question which we have inquired into?—Of course, I could give them general orders not to take any one to gaol, without obtaining the sanction of a Magistrate; and, if they refused, I could make a Report.

1455. Whom should you report to?—I should present the report to the Attorney General, who would read it in Court.

1456. In the Royal Court?—Yes.

1457. What would be the effect of that?—The Court would examine whether I had the

power to give such orders or directions, and, I suppose, would either fine or suspend the police officer.

1458. The Cour Royale has the power of fining or suspending?—Most decidedly.

1459. To what ranks of the Police is that power applicable? Could they do so to a centenier?—With a centenier, and with the constable's officers.

1460. From the highest to the lowest rank?—Yes; without exception.

1461. In the case of their suspending a centenier, does that create a vacancy in the office?—As to suspension, I do not know whether the Court has suspended a centenier for a time; but there are some instances where a constable has been deprived of his office by the Court.

1462. Absolutely deprived of it?—Yes; and I suppose the Court could also suspend, if they could deprive. I do not recollect any case where an officer has been suspended.

1463. There are instances of his having been deprived?—Yes.

1464. Supposing you thought it important, upon any particular occasion, such as apprehending a riot or any thing of that kind, for the officers to meet you at a particular spot, must they obey you?—They are bound to assist, and obey the orders of the constable and centeniers in the discharge of their duty.

1465. They would be bound to obey you?—Yes.

1466. Does the way in which that assistance is to be rendered rest upon you?—If they refuse to assist me, I should present the report to the Court.

1467. If you were to issue a circular to the police, to say that they should meet the constable at a particular place and at a particular time, would they be bound to obey that?—Yes; I should think so.

1468. Suppose, for instance, you thought there was a riot likely to happen at the weigh-bridge, and the centenier said, "No, I think it is somewhere else."—The constable has the power of calling all the officers together at the time and place he thinks proper.

1469. They have not a discretion opposed to your's?—I think not.

*The evidence of Mr. Le Cras was read to the witness.*

1470. Is there any statement you wish to make upon the evidence you have heard?—When Mr. Le Cras came to my office, I asked him several questions relating to the assault he had complained of, and under what circumstances it had happened; and whether Mr. Seward did not complain to him of a paragraph that had appeared in a paper called the "Jersey News."

1471. Mr. Seward was the party who had committed the assault?—Yes. Mr. Le Cras prints his paper under the name of his son; whether to screen himself to a certain point against any responsibility or not, I cannot say. However, the paper does not appear in his own name.

1472. Did he give any answer to that?—I saw that a paragraph in the paper was the cause of the assault; and I told him that I would arrest Seward, and present a Report against him for the assault: but, with regard to Mr. Mahy, the police officer or vingtenier, I had ascertained that, when he was called upon by Mr. Sullivan, the affray was over, and that Mr. Le Cras had taken refuge in a house; that it was not in his vingtaine; and that it was doubtful how far he was bound to act: that it was the impression on Mr. Mahy's mind, at the time, that he had no such power, and he had referred Mr. Sullivan to one of the centeniers: therefore, I said that I would present no Report against Mr. Mahy, but that he might apply to the Crown officers, if he thought proper.

1473. That is as to Mr. Mahy?—Yes.

1474. Did you present a Report against Mr. Seward?—On the same day, I suppose on the same morning, I went to Mr. Seward's house, but did not find him. I called several times without seeing him; and, thinking that he was secreting himself, or at least that he was not disposed to show himself, I left word that I would take bail for his appearance in Court.

1475. You left word at his house?—Yes; I left word that I would take bail for his appearance in Court; that it would be much better for him to come forward, if he was at home. He came to the office some day in that week, with Mr. Copp, who remained bail for his appearance in Court. Seward asked me to put in the Report under what circumstances the assault had taken place. I said, that I might do so, but that I had not Le Cras's newspapers; and he promised to bring them down to the office; but he did so too late to enable me to write out the Report, before Mr. Le Cras presented a remonstrance in Court against Mr. Seward, praying for the ajonction of the Attorney General, which was granted. The remonstrance stated that I had refused also to arrest or take any proceedings against Mr. Seward; and I stated, at the time, that that was incorrect.

1476. The application on the part of Mr. Le Cras was a day after the assault was committed, was not it?—I think it was two days after; but I cannot say positively whether it was two days or the following day.

1477. Can you state at all what interval of time elapsed between the application of Mr. Le Cras to you and his presentation of his remonstrance?—I could not say for the present; but I think the remonstrance was presented the same Saturday; I am not positive. I mean the Saturday of the week in which the occurrence took place.

1478. What would have been the ordinary day for delivering your Report?—On the Saturday, if there had been time to write it out.

1479. The Saturday after the occurrence had been committed would have been the day for your presentation of the Report?—Generally Reports are presented, for what takes place during the week, on the Saturday.

1480. Did you, on the next Saturday, make a Report, or was not it ready by the next Saturday?—It was not ready when the remonstrance was read in Court.

1481. You think the remonstrance was presented on the Saturday?—Yes.

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Mr. Peter Le Sueur.
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1482. You took bail of Mr. Seward before the Saturday?—Yes.

1483. In what amount?—I think it was 20*l.* I am not positive as to the amount, whether it was 20*l.* or 50*l.* In cases of common assault, when a party has obtained an ajonction of the Attorney General, which allows the Court to inflict a fine on the defendant, and also to give damages to the plaintiff, the Report of the constable, or the criminal prosecution, is generally dropped.

1484. Could they both proceed together?—There is no impossibility; at least, I suppose there is none; but still that is generally the course. As to proceeding together, that would be perhaps impossible, because, on the conclusions of the Attorney General, the party might be fined, or even sent to gaol, and of course he could not be committed in two different forms of proceeding for the same offence.

1485. That is owing to the cause en ajonction being itself a Crown proceeding?—Yes, to which the party himself is joined.

1486. So that the presentation of your Report after this became useless?—Yes; it became useless.

1487. Upon receiving Mr. Le Cras's complaint, and hearing his statement, I observe you went to Mr. Seward, the party complained against, and heard his statement?—Yes.

1488. You took security to keep the peace, and heard his statement?—Yes.

1489. In cases of crime generally, is it the course that the Police pursue, to examine, as far as they can, into the truth of the matter by examining both sides?—Certainly.

1490. In all cases?—Yes.

1491. For instance, if a person were accused of a crime, such as stealing, if the accused desired it, you would think it necessary to examine any thing that could be said on his behalf?—To hear what they had to say. There is a prior investigation made.

1492. The Report of the constable in Pigeon's case stated what the prisoner had said on being questioned on the subject?—Yes; it is the practice.

1493. It would also have said what any witness of their's had said, if there had been any?—Any thing important to show that it was doubtful whether they had committed the crime.

1494. The constable investigates?—Yes; and the constable's account of the investigation is entered in the Report; and indeed it is on the Report, and on informations given by the police officer who arrests the party, that the Crown officers are enabled to examine the witnesses, and frame the accusation on the Report or the statement of the constable. The Report is a statement made out of all the important circumstances of the case; and the accusation is drawn up by the Attorney General, usually on the Report: but, of course, if there is any important circumstance which is not mentioned in the Report, the Attorney General is not obliged entirely to ground his accusation on the Report.

1495. The Report forms the materials upon which he frames it?—Yes.

1496. Would there not be the risk of the accusation being ill framed, if the Attorney General were in ignorance of the defence proposed to be set up?—Yes; in some cases, when the accusation has not been exactly grounded on the Report, I think the Court has thrown out the accusation, or part of it.

1497. Is it your apprehension of the duty of the constable, that he is not merely to act upon the complaint of a party complaining, but to investigate the whole of the circumstances of the case before making his Report?—Most certainly, and to exercise to a certain extent his discretion. I must observe that, if the Police refuse to do their duty, the parties can always complain to the Attorney General or to the Court.

1498. May they make a complaint to the Court without making the Attorney General their medium?—If the Attorney General refused to take up the case, they could apply to the Court by means of a remonstrance.

1499. Is that to get a cause en ajonction?—Praying for redress, and stating that redress had been refused, either by the Attorney General or by the police officer.

1500. Do you recollect any instance of that?—I do not at the present moment.

1501. It would be to present a remonstrance against the party who had injured them, and not against the Police for not acting?—I think they could also present a complaint against the Police for not acting, if by their neglecting their duty they had suffered in any way.

1502. If they could show damage resulting to them from the neglect of the Police?—Yes.

1503. They would have a civil remedy?—There would be a civil remedy, unless the Court upon that statement directed the Attorney General to file an information or take some other *ex officio* proceeding.

1504. Can the Court direct the Attorney General to do that?—I should think so.

1505. (To Mr. *Le Breton.*) What should you say?—I should think not, except by way of suggestion.

1506. Are not your functions in effect judicial?—We give no decision. I consider that we are bound to put forward anything in favour of the prisoner.

1507. I understand that all prosecutions are instituted by the Attorney General, or, in his absence, by the Advocate General: they are judges of what ought to be prosecuted. Has the Court the power to order them to prosecute?—I do not think the Court has the power to do so.

1508. Or to review the exercise of their discretion?—No.

1509. Am I right in supposing that they are themselves a constituent part of the Court, acting as a criminal court?—The Court cannot be held without the presence of one of the Crown officers.

1510. Not even a civil court?—No.

1511. By the Crown officers now, you mean the Procureur Général or the Avocat Général?

—Yes; or, if they are both absent from the island, there must be an advocate sworn in to replace them.

1512. (To Mr. *Le Sueur.*) You think, in extraordinary cases, the Court would have the power at least to suggest a prosecution?—Yes; to request the Crown officers to institute proceedings. I never saw a Crown officer refuse to draw his conclusions in cases where the Court had requested him to do so. In cases, for instance, where any party had made a disturbance in Court, the Court would request the Attorney General to draw his conclusions against the party; and I have never seen the Attorney General refuse to do so: and I may say that I have seen him wait till the Court requested him to draw his conclusions, so that, to a certain extent, he considered himself bound to act on the request of the Court. I have here a case which has been handed to me by the Vicomte, where a police officer is condemned to a fine for having refused to assist a centenier. "L'an mille sept-cent vingt-huit, le vingt-cinquième jour de Mai, Mr. Simeon Du Prè, officier du connétable en la paroisse de Ste. Marie, est condamné à l'amende, à l'instance du Procureur du Roi, pour avoir refusé de sortir hors de l'église avec Mr. Jean Renouf, centenier en la dite paroisse, pour faire visite des cabarets et faire observer l'ordre durant le Service Divin, selon le devoir de sa charge, suivant les prémisses." With respect to the complaint of Mr. Le Cras, it is not the first complaint I have had from him. Here are two letters (*producing the same*) which were written to me by Mr. Abraham Jones Le Cras in 1842; complaints that he had been murderously assaulted in the public market, both he and his son, and requesting me to bind the party to keep the peace, and also to take measures to cause him to be dealt with according to law.

1513. In what way do you use these letters?—Mr. Le Cras had been assaulted, on account, of course, of an article which appeared in his paper, by Mr. Du Jardin. He complained of having been murderously assaulted, when a whip had been used. I suppose it was more to shew his contempt of the person than anything else.

1514. You introduce these letters to shew that Mr. Le Cras takes a rather exaggerated view of assaults upon himself?—Yes; that is the object of it. Mr. Le Cras now, I dare say, is on friendly terms with the party.

1515. Is there anything else you wish to add?—With respect to the affair of Stephen Thomas, and Mr. Chevalier's sending him home to dinner: I told Mr. Chevalier that his Report could not be presented before two o'clock, or nearly two o'clock. Shortly afterwards the Court broke up; so that the Report could not be presented on that day.

1516. (At the request of Mr. *Le Cras.*) With regard to the assault committed upon Mr. Le Cras and his son in 1842, did not you promise to enter a report against the assailant?—I did not: I do not suppose I ever saw his son about it.

1517. Is it customary for you to examine the contents of a newspaper to see whether the contents justify a breach of the peace?—Most certainly, if the party tells me that such a paragraph has appeared in a paper, and it has provoked an assault, I think it is my duty to examine it.

1518. I understand you to say that, where a party is charged with an assault which has been provoked by a paragraph in a newspaper, you think it your duty to examine the newspaper to ascertain what were the expressions used?—Yes; to examine the paragraph, that it may be stated in the Report to be presented to the Court. The Report is to be, and ought to be, in every case, not a one sided view of the case, but to show both the complaint of the party, and under what provocation the other party may have acted.

1519. How is it that the provocation which has appeared in a paragraph constitutes one side of the question, when a breach of the peace is the offence complained of?—If the paragraph in the newspaper is so very insulting as to have provoked a party to commit an assault, and the assault has not been violent, I think the Court would of course take into consideration under what circumstances the assault had taken place.

1520. I assume that, as a lawyer, and dealing with it as a strict question of law, you would admit that no paragraph in a newspaper could legally justify an assault?—Not legally: I do not speak of it as a justification, but only as an extenuating circumstance.

1521. As likely to be important in mitigation?—Yes.

1522. Do you think it part of the duty of a constable, not only to state those facts which constitute the crime in his report, but also those things which may have led to it?—Yes.

1523. All the collateral circumstances you think should form a part of the constable's Report?—Yes.

1524. Suppose a woman had murdered her husband, should you think it necessary to examine whether the husband had provoked her by infidelity?—Certainly: all those circumstances would be entered in the Report. If a murder took place by a husband of his wife under circumstances in which the husband found the wife committing adultery, it would be stated.

1525. Do you make any minute in your books of the bail which you take, and the names of the parties who give it?—No.

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Mr. *Weston Le Cras* examined.



1526. Do you wish to state any circumstance to the Commissioners?—On the day the assault was committed upon me in 1842, I waited upon Mr. Le Sueur at his office, in the company of another person; and I showed him the marks of the assault which had been committed upon me that day. I stated the circumstances, and asked him what he intended to do in the matter. He said he should bind the assailant to keep the peace. I also asked whether he intended to enter a Report. He said that he should; which he has never done. This I am ready to state upon my oath.

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Mr. Weston Le Cras. 11 September, 1846.

1527. (To Mr. *Le Sueur.*) Is your recollection consistent with that statement?—I have no recollection of having seen Mr. Weston Le Cras upon the subject. The letter is from the father; and, as Mr. Le Cras says he called at my office, he may have done so; but I have no recollection of the circumstance at all.

1528. Do you generally make any minute of those calls?—No: the minute which I made of the call of Mr. Bromer I produced to the Commissioners yesterday. Of course, if I am to act in the case, I make a note of the name, and so on.

1529. Do you keep those minutes?—To the day the Reports are entered, but not after.

1530. You did not in fact enter a Report against Mr. Du Jardin, did you?—No; I entered no Report. I bound him to keep the peace.

1531. What led you not to enter the Report?—I suppose I thought the assault was not sufficent to enter a Report upon: but in most of those cases, if there has been a provocation, the course is to present a remonstrance in Court, and ask for the ajonction of the Attorney General. That is usually the way in which those cases are disposed of.

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Mr. Charles Carus Wilson.

Mr. *Charles Carus Wilson* examined.

1532. Have you any statement to make to the Commissioners?—I was walking up Gloucester Street, on a certain morning. I was suddenly struck with a very large stone in the small of the back. I looked round to see who the assailant was; and I found it to be a certain person who lodged in the same house. I ascertained the names of two persons who saw the assault, and took the stone and a written statement to Mr. Le Sueur, at his office, by appointment. He promised to enter a Report and proceed. From that day to this he has done nothing.

1533. Mr. *Le Sueur.* I saw the party, and ascertained that you had provoked her, and addressed very insulting language to her, and that she had taken up the stone and thrown it at you.

1534. Mr. *Wilson.* I never spoke to her upon any one occasion.

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J. Le Couteur, Esq., Viscount.

*John Le Couteur,* Esq. (Viscount) examined.,

1535. I believe you are the Vicomte of the Island of Jersey?—I am.

1536. It is an office of considerable importance in the Island?—It is.

1537. How long have you been Vicomte?—Nearly four years.

1538. Does the appointment to the office rest with the Crown?—It is by Letters Patent of the Crown, during pleasure.

1539. Will you tell the Commissioners what the duties of the office of Vicomte are?—He has the charge of the prison, with the assistance of the Prison Board. Anciently he had it nearly solely in his own charge, under the guidance of the Bailiff. Since the establishment of the Prison Board, his duties have merged in a considerable degree with those of that Board. All summonses are issued from his office in criminal cases. He is sheriff, and may make all arrests.

1540. Does the summons in criminal cases extend to the summons of people to give evidence?—Yes.

1541. He is also, I believe, the executive officer of the Crown in the Island?—Yes. He is also Coroner.

1542. Will you inform the Commissioners in what mode the Coroner's Inquest is held. Is the Inquest held by the Coroner of his own authority, or is it by direction from the Court to hold an inquest?—By direction of the Bailiff. A Report is made in the first instance to the Crown officer, and to the Vicomte, that a death has taken place. That Report is made by the constable, or one of the police officers of the parish in which a sudden or violent death has happened. The Vicomte then obtains an order from the Bailiff to hold the inquest, and assembles twelve men, and they hear evidence.

1543. Do the Attorney and Solicitor General form part of the inquest?—The Attorney General attends with the Vicomte.

1544. Evidence is heard?—The jury are sworn; and evidence is then given, but not on oath.

1545. Have you the oath which is taken by the jury?—

"Vous jurez et promettez, par la foi et serment que vous devez à Dieu, que bien et fidellement vous rapporterez comment vous croyez que la mort est arrivée à——; ce que vous ferez sans faveur, haine ou partialité, comme vous voudrez en répondre devant Dieu, à l'acquit de vos consciences."

1546. The evidence which is given is not upon oath?—No.

1547. Is the case summed up at all to the jury?—No; it is not.

1548. Is the Attorney General heard at all?—The Attorney General asks what questions he thinks proper.

1549. And then the jury give their verdict?—The jury give their verdict.

1550. Does that terminate the proceedings altogether?—The jury is summoned to attend the following Saturday, to justify their verdict before the Court. Notes of the evidence are invariably taken in writing, and kept in my office. I should say that these inquests are usually held by the Deputy Vicomte, except in his absence, when I hold them myself.

1551. The verdict is recorded?—The verdict is recorded in the presence of three Jurats. The Bailiff and three Jurats must sit to receive that verdict.

1552. What is the number of persons who constitute the coroner's jury?—Twelve.

1553. How are they selected?—Properly they are selected by the Vicomte. Sometimes the constable in the country parishes assists in finding them; but, strictly speaking, it is the Vicomte.

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1554. Are they the nearest twelve men who can be assembled?—The nearest twelve respectable men who can be assembled. In cases of poisoning, or serious cases, a surgeon or two surgeons are called in. Every possible pains is taken to select, not only the most respectable men possible on the jury, but to obtain all the evidence that can be obtained; and we have adjourned from day to day on various occasions where it was necessary to investigate very fully.

1555. Is it necessary that the jury should come from a particular parish?—No; it is not so; but we generally take them, as matter of convenience, from the parish.

1556. You said that an inquest took place when there was a murder or violent death: I suppose also when a body is found?—Invariably in all cases of uncertain death.

1557. Upon whose discretion, in the first instance, does it rest whether application should be made to you to hold an inquest?—It rests with the Police in the first instance. If we do not receive information, we are not supposed to act officially. If a flagrant case occurred, no doubt the Attorney General would take notice of it.

1558. In case of the neglect of the Police, the Procureur Général could call upon you to attend, could he not?—I should think so.

1559. (To Mr. *Le Breton.*) In case of violent death, and the constable neglecting to apply for a coroner's inquest, should you do so?—Yes; I should mention the circumstances to the Bailiff, who has the power of ordering the inquest. It would remain in the discretion of the Bailiff to issue a writ or not.

1560. In case of a coroner's inquest being called, and a verdict being returned of wilful murder, do not the proceedings still go on before the Criminal Court? If a person is apprehended, he is brought up, and the whole proceedings follow in the same order as they would do upon a Report from the Police?—Yes; the constable would equally make his Report, quite independent of the Report of the Coroner's Inquest. The inquest is merely to report the cause of the death.

1561. Are the jury sworn on the Saturday to the truth of their verdict?—No; they are called before the Court, and confirm their Report by virtue of the oath which has been administered to them.

Adjourned to to-morrow, at ½ past 10 o'clock.

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*Saturday, September* 12, 1846.

J. Le Couteur, Esq., Viscount.

12 September, 1846.

*John Le Couteur,* Esq. (Viscount), further examined.

1562. Will you proceed with any further observations which you may have to make to the Commissioners?—I should like to be allowed to make one or two other observations relative to coroner's inquests. I think that the witnesses should be heard upon oath. I see a very great inconvenience, and also that the witnesses are put in a false position by being merely examined as they are now. A witness will sometimes say, on mere parol evidence, what he would not say upon oath; he would be more careful in the latter case; and I believe it would be more advantageous to the ends of justice, and enable the Attorney General to frame his case better, if the witness spoke the entire truth under oath at the first examination before the coroner. We have sometimes seen discrepancies between evidence given before the coroner and that afterwards given upon oath before the Royal Court.

1563. Perhaps that would be strengthened by the fact that the investigation, not only does not take place upon oath, but takes place in a less formal meeting, where you are all standing round the body?—Yes.

1564. You would therefore say that it would be the more necessary to be on oath?—The whole proceeding does not take place in the presence of the body; because, after the viewers have seen the body, and are satisfied with the report of the surgeon, they retire to a room.

1565. It is rather a meeting of twelve or thirteen gentlemen together, than a court sitting in form?—Perhaps so.

1566. Before becoming Viscount, you had served the office of Jurat, had you not?—Both of Constable and Jurat.

1567. You have had a great deal of experience, in those capacities, in administering the criminal law of this country?—To a great extent. I have been twenty five years connected with the Police of the parishes of the island in one way or the other. I was six years constable, and rather more than two years Jurat, and since that Viscount, four years.

1568. The latter is an office connected with the administration of criminal justice, is it not?—Yes. I think I have derived more information from searching the Rolls of the Orders in Council, and assisting in making a précis of 806 Orders in Council, than in any other way.

1569. One of the members of your family held the distinguished rank of Deputy Bailiff for many years, whose manuscripts you have made it your care to investigate and study?—Yes; Sir John Dumaresq.

1570. In point of fact, you are acquainted practically, during your own time, with the working of the system, and, by the records you have in your possession, with the working of the system before your time, in the time of Sir John Dumaresq?—Yes; Mr. Le Geyt was also an ancestor of mine.

1571. One gentleman, who was under examination here, stated that he thought it extremely important, not only with reference to the coroner's inquests, but to ordinary acts of accusation, that the evidence should be given on oath previously to the Attorney General framing his accusation. Do the remarks you have made as to coroner's inquests apply also to those?—That would require a little consideration. It would entirely alter the form of the law here. I think,

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if a proper magistrate were established like a Justice de paix in France, or a police court in England, it would be most advantageous to the public at large to have all depositions taken before him on oath.

1572. Do you think, having had the advantage of your very long experience, that any person ought to be put on his trial for a criminal charge before some evidence has been taken on oath for the purpose of committing him?—It would be very desirable that a magistrate should sit for that particular purpose, and give as summary a decision as possible upon it.

1573. It would be desirable that a magistrate should sit for the purpose of taking evidence upon oath before committing a person to take his trial?—Certainly. I have found a precedent for confiscating goods in case of suicide. That I believe to be the law now; but it has never been the practice.

"L' An mille sept-cent vingt-neuf le douz^me^ jour d' Avril, sur le Rapport de Jean Briard, François Hamon, Phillippe Le Brun, Elie Vibert, Thomas Le Maistre, Elie Mauger, Josue Esnouf, et Philippe le Gresley, qui assistèrent à la visite et levée du cadavre de Jean le Gresley, trouvé noyé dans la mare de S^t^. Ouen, lesquels ont été cejourd'huy convenus en Cour par le Procureur du Roy pour déclarer à la justice de quelle manière la mort seroit arrivée au dit Jean le Gresley, la Cour, les conclusions des officiers du Roi sur ce ouyes, a confisqué tous les biens meubles du dit Jean de Gresley au bénéfit du Roy ou des seigneurs de fief auxquels il appartient, excepté les droits de varage clutage et entamage appartenant au Vicomte, vu que la pluralité de dits hommes, sçavoir dix des douze, sont d'opinion que le dit Jean de Gresley se seroit precipité et causé la mort à luy mesme sans l'aide ni participation d'autruy."

1574. Can you from your knowledge recollect any Report of an inquest in which the technical language of felony is applied to homicide de soi même?—I think not.

1575. Will you tell the Commissioners the shape in which the verdict of the jury is taken when a person dies by his own hand?—

Mr. *Philip De Ste. Croix* (Deputy Viscount). "Qu'il s'est lui même donné la mort, en se pendant par le cou, ou en se coupant la gorge, dans un moment d'aliénation mentale," as it may appear by the evidence.

1576. Is that the invariable verdict?—That is the invariable verdict which is returned.

1577. (To the *Viscount*.) You were reading to the Commissioners a verdict which differed from that?—In this instance it is "que le dit Jean le Gresley se seroit precipité et causé la mort à lui même sans l'aide ni participation d'autruy."

1578. What is the date of that finding?—The 12th April, 1729.

1579. If, in searching through the ancient records of the Vicomte's office, you can find any inquest in which the verdict of the jury is that of felo de se, or in any way differing from this, perhaps you will be kind enough to present it to the Commissioners?—I will do so.

1580. In case of murder, does the coroner's inquest find the fact that the death was occasioned by the crime of another person?—It would state that it was wilful murder. The return of the jury is usually embodied in the Report; all the information they collect the constable embodies in his Report. In every case where a murder took place, the Report of the constable would be made to the coroner instantly; and then, the coroner's inquest being held, the Attorney General would frame his prosecution upon the Report of the constable.

1581. In point of strictness, the accusation is framed upon the constable's Report, though the coroner's inquest is one of the elements of that Report. The inquest itself is not sufficient to set the Attorney General in motion?—I would rather refer that question to the Attorney General himself. I do not understand here that the constable could avoid making his Report. He could not avoid noticing that a verdict of wilful murder had been recorded. Here is a Rapport made in the case of natural death.

"Convenus à l'instance des off^rs^ du Roy, pour déclarer par quel accident la mort seroit arrivée à Mons^r^. Phle. Falle, trouvé mort dans le lieu où il faisoit sa démeure, ont à nous declaré, comme lors de la visite et levée du cadavre sur serment devant le Dénonç^r^ Aubin, agiss^t^ pour le Vicomte, croire en leurs consciences que la mort serait venue au dit Falle subitem^t^ sans aide de luy même ny d'autruy."

1582. What is the technical name of the inquest?—Levée de corps. There has been a dispute with respect to the mode of paying the coroner. In 1828, on the 5th of April, Mr. Le Gallais, the Deputy Viscount, presented an account for 193*l.* sterling for the coroner's inquests.

1583. Presented to whom?—It was originally presented to the King's Receivers. The account was referred by the Receivers to Lord Beresford, then Governor of the Island, who objected to pay it.

1584. Formerly the fees for holding coroner's inquests were defrayed out of the revenues of the Crown, were not they?—Yes. The Deputy Viscount actioned the King's Receivers before the full Court.

1585. What was the last time that those expenses were paid by the Crown?—I should think about the year 1825 or 1826. The Deputy Viscount sued the Receivers before the Royal Court: and the Court ruled that, in future, the Governor should pay for Inquests held on the bodies of persons who had been in the service of his Majesty; the Island for those of strangers; and the parishes for their respective inhabitants.

1586. Then an action was brought, the judgment upon which was exclusively prospective, as to future practice?—Yes.

1587. Is that usual?—They wanted to avoid picking a quarrel with the Receivers.

1588. The judgment in that action is in fact the law?—It is what we follow now, or at least we try to follow it; but the Parish of St. Hélier refuses to pay our account, though we have paid the jury their 2*s.* 6*d.* each.

1589. Each juror receives 2*s.* 6*d.* on a Levée de Corps?—Yes.

1590. The verdict of a Levée de Corps is called the Rapport, is not it?—Yes.

1591. Did not the Cour Royale give some judgment in the particular action?—I will obtain that for the Commissioners.

*It was put in and read as follows.*

*A la Cour Royale de l'île de Jersey.*—L'an mil huit-cent vingt-six, le vingt-deuxième jour de Septembre. Sur l'action du Procureur Général du Roi vers Hélier Touzel, écuyer, et Matthieu Amiraux, écuyer, Récéveurs des Revenus de Sa Majesté en cette île, pour voir ordonner par justice sur la représentation faite à la Cour de la part de Monsr. Jean Millais, tant pour lui même que pour les autres hommes, qui ont assisté aux levées de corps de quatre étrangers, dont les rapports furent présentés devant la Cour, le 20me jour de Janvier dernier, au sujet du refus du Député Vicomte de leur payer ce qui leur est dû pour avoir assisté aux dites levées, prétendant que Messrs. les Récéveurs des Revenus de Sa Majesté lui ont déclaré qu'ils ne s'y croyoient pas sujets, le tout selon qu'il est contenu en l'acte, en date de l'an 1825, le 20me jour de Janvier, suivant les prémisses, et ouir droit et jugement par devant le corps de la Cour, suivant à l'envoi de la cause, par acte en date de l'an 1825, le 26me jour de Février. La Cour a jugé que les frais des levées de corps des personnes qui manquent de moyens doivent être portés, savoir: Par la recette des Revenus de Sa Majesté pour les personnes au Service de Sa Majesté, et ceux de la famille de telles personnes; par le public pour les étrangers; et par les paroisses pour leurs habitans respectivement. Partant que les frais des levées de corps des quatre personnes dont il s'agit présentement doivent être portés par le public.

FRS. GODFRAY, *Greffier.*

1592. So that, as far as the sentence of the Court can effect it, the expense of inquests held upon bodies of men who have been in the service of Her Majesty is paid by the Governor; and those held upon other people ought to be paid, according to the judgment, in the case of strangers by the Island, and of others by the parish in which they reside.—Yes; that is, for the poor of the parish: in the case of a rich family they pay for the inquest.

1593. What was the result as to the 193*l.*?—It was paid upon my motion by the States provisionally. I was constable of St. Brélade's at that time.

1594. That reserved the right of the States against the Receiver General?—Yes. With regard to the enditement, I have cited some precedents; and I have come to the point where Rouillé shews the enditement is to be composed of twelve "*indifferent*" men or "*impartial*" men. Upon this ground, and my own experience, as a constable and having presided at the enditement myself, I object to the constitution of our enditement.

1595. You think it is not conformable to the law?—I do not think it is in the spirit of the law.

1596. You object to the composition of it by the Police because they are not indifferent men?—I will state distinctly the view I take to the Commissioners. I will point out, from Le Geyt, and from the work of Messieurs Dumaresq and Hémery, that they support my view. I find in the "Manuscrits de Philippe Le Geyt," under the title *Enditemens*, p. 251: "En 1563, le 17 Mars, il est dit que six hommes sermentez rapportoyent que deux accusez étoyent plustost larrons que loyaux, &c. Et en 1611, le 20 Juillet, que, le connétable et six sermentez de St. Ouen se trouvant différens sur le crime de Rachel Le Blanc, justice n'avait pu tirer outre et avait différé jusqu'à la prochaine Cour de Cattel, pour avoir l'avis des Justiciers absens; avec charge aux officiers de s'informer plus amplement. La même année, le 5 Décembre, il est dit que, si les sermentez varient, il en faut douze pour enditer." Then he goes on to quote what is done in England:—"Voilà, comme je crois, l'origine du nombre de douze sermentez qui doivent à cette heure dans les enditemens accompagner le connétable ou centenier de la paroisse du criminel, et jamais moins." In England, inquests of malefactors ought to be by twelve lawful men. "*Concordes Scil.* Le nombre y est ordinairement de dix-sept, dix-neuf et vingt-un."

1597. Are not the sermentez the same as the officers of the constable?—I suspect that formerly they did not take the constable's officers, but that they took twelve respectable men, not the principaux. I think I have read that somewhere. I am speaking from memory; but my impression is that they were not officiers de connétable, but that they were twelve indifferent men.

1598. Are not the officiers de connétable also called sermentés?—I think not. We have sermentés de vraic, but not others.

1599. (To Mr. *Le Breton.*) Are the officiers de connétable now, or were they ever at any time, called sermentés?—I have never heard them so called.

1600. Mr. *Francis Godfray* (Greffier.) I believe they were anciently so called.

1601. (To the *Viscount.*) In point of fact, the people who formed the enditement in the passage cited by you are called sermentés.—Yes.

1602. In that case six of them found the verdict?—Six with the constable.

1603. Is the constable mentioned there?—No; but they could not sit without the constable.

1604. If you liken it to a grand jury, and your view is that the constable must preside, that would tend to show that they must have been Police. If they resembled a Jury of Examination, they would have elected their own foreman?—The constable is afterwards mentioned; the constable and six sermentés are mentioned.

1605. Your theory is, that the six who are mentioned there, together with the constable, make up in number seven, the majority which is necessary to find a prisoner guilty.—Exactly so.

1606. How do you account for the constable not appearing, and six sermentés appearing by themselves, in the Act of Court of 1563?—It was the same process; the six appeared with their constable; only the constable does not happen to be mentioned.

1607. Mr. *F. Godfray* (Greffier.) The following are the two Acts of Court which are alluded to in the extract which has been read from Mr. Le Geyt.

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*The same are read as follow.*

J. Le Couteur, Esq., Viscount.

12 September, 1846.

"*A la Cour Royale de l'Isle de Jersey.*—L' An mil-six cent onze, le vingt-unième jour de Juillet. Par devant Monsr. Bailly, présents Daniel Dumaresq, Hugh Lemprière, Hélier De Carteret, Elie Dumaresq, Clement Dumaresq, Aaron Messervy, Philippe Journeaux, Jurés.

"Hélier Le Montays, connétable de la paroisse de St. Ouen, Jean Ricard, Thomas Bichard, Jean Fondan, Magdolain Le Cerf, William Le Rossignol, sermentés de la dite paroisse, soy trouvant différens sur l'enditement de Rachel Le Blancq, Justice n'a pu tirer outre en la cause touchant l'homicide de Jennette Le Blancq, dont elle est suspectée, et partant les Justiciers présens ont différé la cause decy à la prochaine Cour de Cattel, et commandé au dit connétable et sermentés d'y garder leur jour, pour avoir l'avis et bon conseil de Messrs. de Justice absens, donnant charge au dit connétable et sermentés s'informer plus amplement de la cause, et de saisir la personne de la dite Rachel et l'apprehender en justice. Le dit William admis sermenté en cette cause.

"*A la Cour Royale de l'Isle de Jersey.*—Mars 18. L'an mill vts. lxiij. le xviijième jor. du moys Mars. Par devant Monsr. le Bailly, présents John Lemprière, N. De Soulemont, Ts. De Soulemont, L. Hamptoñe, Jurés.

"Après le Rapport de Philippe Le Boutillier, connétable de la paroisse de la Trinité, John Le Masurier, Philippe Romeril, Philippe Bisson, Thomas Cabot et Helier Bisson, sermentés de la dite paroisse, lesquels nous ont rapporté par leurs serments qu'ils croyaient en leurs consciences que Jacques Le Gros et Philippe Grandin sont plustôt larrons que loyaux, à raison de quoi les dits Jacques Le Gros et Philippe Grandin sont regardés aller, en détention corporelle, au château, en prison fermée comme criminels, et est commandé au Vicomte ou Dénonciateur en faire l' exploit."

1608. (To the *Viscount.*) I understand you to say that you think the origin of the enditement consisting of twelve was the decree of the Court in 1611?—The difficulty found in this case, which was decided by a decree of the Court of the 5th of December, 1611, that, if the sermentés differ, there must be twelve to make the enditement.

1609. The Court there say that, if the sermentés differ, there must be twelve to form a jury, and then that seven must agree to find him guilty?—Yes.

1610. Your opinion is, that the sermentés were not officers of the Police, but were sworn for that purpose?—I do not positively say that: but I think I have read that the constable might call upon any twelve respectable men to act.

Mr. *Dupré* (Avocat Général). The acte of the 20th of June, 1611, shews that the men of the enditement were members of the Police. Five are called "sermentés," and the sixth "admis sermenté en cette cause". The party accused was not in custody. The same appears from the acte of the 18th of March, 1563. The arrest is ordered on the rapport of the enditement. The proceedings were only preliminary, being the report of the Police to authorize the detention and trial of the accused. The evidence before the men of the enditement was taken out of court.

1611. (To the *Viscount.*) You would say that that which you find in the entry of 1563, namely the constable and six men, represents the origin of the jury of twelve, mentioned in the passage from the "Stille de Procéder: Du procédement à la vue et enqueste des dicts et bref, et clameur de haro?"—Yes. I said I objected to the constitution of our enditement. In what I am about to say, I am speaking particularly of my own parish, and within my own knowledge.

1612. Your parish was St. Brélade's?—Yes; it is a country parish, with a seaport attached to it. I have known instances, where an individual, who has committed an offence, has been taken up and conducted to prison by the police officers, and I had those same individuals sitting on the enditement afterwards.

1613. You differ from the evidence given the other day, then?—If an officer saw the act committed, or saw the person immediately on the act being committed, you would not have that individual be on the jury: but those who took him up and are in conversation with those who seized him, whose minds may be more or less prejudiced, in consequence of the conversations they may have held with such individual as may have arrested him, would be received.

1614. Perhaps the number of Police in a country parish is so limited that, if you take the enditement from the Police, you must be obliged to take somebody connected more or less with the crime?—We are generally obliged to do so. There is also this other case, that, if the prisoner should happen to be a near relative of one of the Police, the case becomes still more complicated. No man, I consider, under those conditions, can fairly, according to our old Rouillé, be called "indifferent," or ought to sit on a jury to try a person whom they have conducted to prison. It appears to me that a very easy remedy would have been found by making the constable and twelve men from the Eastern district, we will say from Grouville, or St. Martin's or Trinity, sit for the trial of crimescommitted in St. Brélade, St. Ouen or in St. Mary's. That would have got rid of the difficulty at once.

1615. You mean that, supposing you have no choice as to the constables' men, you might mitigate the evil by that expedient?—Yes. They would have no connexion with the prisoner. I do not agree with Messrs. Hémery and Dumaresq upon this point. In page 42, they say, "We need not, as we conceive, point out the impropriety of this course of proceeding. The constable and his twelve officers are styled in the language of the country "*l'Enditement*," and, when the majority of them find the prisoner 'rather guilty' (this is the term of their Report) 'than innocent,' he is said to be criminally indicted, and a jury, if demanded by the prisoner, is then called to try the fact. This first inquiry carries in all its parts such

striking features of the functions of a Grand Jury in England, as leave no room to doubt but that they were originally constituted for the same purpose, and (proportion kept) both equally well adapted for this preliminary step in a criminal suit." I do not think they are equally well adapted, because the Grand Jury in England can have no connexion, direct or indirect, with any person who can be brought before them.

1616. You think this worse than our Grand Jury?—Certainly I do.

1617. The Grand Jury, you are aware, except in London, are usually gentlemen of fortune and education?—Yes. The remedy would appear to be easy. The Parish Assembly in January, when the rate is fixed, might select a number of intelligent men to serve as jurors. Those should be sent in to the proper officer.

1618. Whom would you call the proper officer?—I do not think the Crown Prosecutor is the proper officer. The Sheriff would be a proper person. He should draw a certain number of names by lot from each district. A Western jury to try offences committed in the East, and an Eastern jury those committed in the West. This does not exactly belong to the examination; but, as it is a fact, I will bring it forward. In our Agricultural Society, which has been formed ten years, we have adopted that system of having committees of the Western district to adjudge the cattle in the Eastern, and the contrary: and we have found it most advantageous. It has given universal satisfaction. I think the principle would hold good in juries, and that an impartial judgment would be likely to be obtained.

1619. With respect to the Parish Assembly, you are aware that a great deal of evidence has been given before us, that it is in itself very much subject to the influence of the Police. The names, you say, are still to be selected by the Assembly: they could not pack the jury therefore; but they could pack the panel?—I think the names would be fairly selected. What would it signify to one party or the other, that a given number of men should do justice in criminal matters?

1620. According to your view, the selection being antecedent to any particular cause, their interest might be one way just as much as the other?—Exactly so. They would be named for the year.

1621. A jury then might be selected by the Parish Assembly as at present constituted?—I do not mean to go the length of saying as at present constituted.

1622. Assuming the constitution of the Parish Assembly to remain as vicious as it has been represented to be by certain witnesses, do you still think a jury could be fairly selected by such an assembly?—A very great improvement might be obtained.

1623. You are perhaps aware that, according to all the theories of the original constitution of the enditement, that would still be a greater deviation than any one you have yet suggested, because you violate the principle of the vicinage?—That is only in the grand enquête.

1624. The old principle was, that they were to come as near as possible to witnesses of the offence?—I differ from that entirely.

1625. As the enditement is at present constituted, do you know whether the prisoner has any right of challenge?—Yes; he may challenge them for a cause.

1626. Is it also the fact that the Attorney General may exclude any person who is near akin?—No doubt of it.

1627. So that there is a mode, in the hands both of the accused and the Crown, to object for reasonable cause to any member of the enditement?—Certainly.

1628. This difficulty would still remain, that no challenge would get rid of the esprit de corps. Though you might get rid of a relative of the person charged, the enditement would be composed of a body among whom there would be an esprit de corps injurious to a fair consideration of the case?—Yes.

1629. Are you aware whether this Island is so split into divisions that there is a jealousy between two different parishes, so that there may be for instance a feud between the parish of St. Brélade and the parish of St. Martin?—No; there is nothing of that kind.

1630. Are there no parochial feuds of one parish against another?—No, nothing like it. I wish to add that the evidence before the enditement should be given *vivâ voce*. I think it would be so according to the law as it stands now. Dumaresq and Hémery, and Le Geyt before them, all recommend that the evidence should be *vivâ voce*. At page 44 in Dumaresq and Hémery's work you will find this passage. "For it were to be wished that the men, who compose both the one and the other, should themselves hear the witnesses *vivâ voce*:" and Mr. Le Geyt, at the word Enditement, page 253, says: "Je n'estime point néanmoins qu'il ne soit encore permis de produire des témoins et des preuves après l'Enditement, et même le jour où l'Enquête passe. Car il serait à souhaiter que les hommes, tant de l'un que de l'autre, peussent entendre eux mêmes les témoins de vive voix."

1631. Looking at that passage of Mr. Le Geyt, it would appear that, at the time he was writing, *vivâ voce* evidence was taken before the enditement?—Yes; I see it bears that inference.

1632. The statement of Hémery and Dumaresq, learned as it is, was a statement drawn up for the purpose of showing that trial by jury was the law of this State, was not it?—Not exactly. It was to deduce from ancient practice that trial by jury was very desirable to be established here. The fact is, that they wished to carry it into civil cases as well as criminal. There was a strong contest between the two parties.

1633. I understand, that an Act had been passed by the States recommending or introducing as the law trial by jury, which applied to all cases civil and criminal?—Yes.

1634. The Cour Royale objected to that law, and appealed to the Privy Council against its enactment; and, upon that, the Privy Council directed Messieurs Hémery and Dumaresq, who were supporters of the law passed by the States, to draw up a statement of the mode of proceeding in civil and criminal cases for their information, and upon the other side the Attorney

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and Solicitor General for the time being, Mr. Durell and Mr. Pipon, were to draw a contrary statement, stating what their view of the law was?—I do not know that it was a contrary statement. It was their own view. I find they agree in a good many points.

1635. They agree in the authorities to which they refer; but they draw different deductions?—Yes. But I think both state the law fairly. I now beg to present to the Commissioners what I consider a very important case. I have always considered the decisions of the Sovereign in Council as positive law. The following is an Act dated 20th of April, 1727.

"L'An Mille Sept-cent Vingt-Sept, le Vingt^e Jour d'Avril, Sur l'action du Proc^r. du Roy, et de Guillaume Dumaresq, Esc^r., Récéveur des Revenus de Sa Majesté, et de George de la Bère Gent, délateur, ajoints vers Mons^r. Guy Garnier des Moriers, et Mons^r. Ph. Patriarche, agissant po^r Mons^r La Laude Magon et po^r les autres propriétaires de certaine quantité de marchandises des Indes Orientales, saisies par le conestable de la paroisse de S^t. Brélade, en cette Isle de Jersey, le 21^e jour de Septembre 1726, et ensuite sequestrées, par ordre de la Cour, entre les mains du Député Vicomte, où elles sont encore, po^r. avoir, contraire à deux Actes de Parlement, l'un de l'an 12^e du regne du Roy Charles Second d' heureux mémoire, comunement appelé l'acte de Navigation, et l'autre de l'an 7^e du regne de notre Souverain Sire George, Roy de La Grande Bretagne &c., fait apporter en fraude dans un certain vaisseau étranger, nomé le St. Esprit, et navigué par des étrangers, les susdites marchandises des Indes Orientales, dans le havre ou port de la Tour, ordinairem^t. appelé la Chausée de St. Aubin, et du bord d'iceluy vaisseau, le St. Esprit, avoir fait décharger les dites march^dises, partie de la cargaison du dit vaisseau, le St. Esprit, dans un bateau ou chaloupe étrangere, dont Guill^me le Noble, aussi étranger, étoit maistre, quel bateau, avec les d^tes march^dises, auroit ensuite mis à terre, et seroit demeuré à sec proche la maison d'Edouard Touzel, Gent, à S^t. Aubin, en quel lieu le d^t bateau et marchandises auroient été ainsy saisis par le dit conestable de St. Brélade. Et partant voir ajuger la confiscation des dites marchandises, moitié au bénéfit de Sa Majesté, et l'autre moitié au bénéfit du délateur, en vertu et conséquence des avants dits deux Actes de Parlem^t, et ouir droit et jugem^t. suiv^t. et conformem^t. à l'ordre de Sa Très Excellente Majesté, et des Très Hon^bles Seigneurs de Son Conseil Privé, en datte du 8^e Jan^r 1726, qui ordoñe à la Cour, après la transmission par elle faite à Sa dite Majesté et Conseil Privé, de procéder sans délay et juridiquem^t à l'examen de cette affaire, et de prononcer sentence sur le tout selon loy, suivant les prémisses, étant Guillaume le Noble, maistre du susdit bateau, et Mons^r. Ph. Patriarche son caution, appelés en cause, po^r. voir ajuger la confiscation du d^t. bateau et appartenances, en vertu et conséquence des susdits Actes de Parlement, suiv^t. les d^tes. prémisses. La Cour ayant trouvé qu' il n' y a eu aucune intention de fraude sur les droits de Sa Majesté, mais de mettre en sureté les dites marchandises, qui auroient été perdus par la voye d'eau, a donné main-levée des dites marchandises aux dits propriétaires, en payant les fraix d'abiennement et autres, et le loüage des maisons qu' elles ont occupeés. De quelle sentence les d^ts acteurs ont appelé par devant Sa très Excellente Majesté notre Souverein Seigneur George, par la Grace de Dieu Roy de la Grand Bretagne &c., et les Trés Honorab. Seigneurs de Son Conseil Privé: et sont James Pipon Gent et M^r. Jean Payn démeurés pleiges des d^ts. appellants, tant po^r. la poursuite du d^t. appel dans le temps permis en loy, que po^r. l'amende coutages et dépendences, s'obligeants les d^ts. appellants d'indemniser les dits pleiges, sur tous leurs biens meubles et héritages présents et à venir."

The Crown Officers appealed: and here is a case, which I maintain to be the law of the Island. It is dated on the 26th of March 1729, and was registered here on the 10th of May following.

"Upon reading this day at the Board a Report from the Right Honorable the Lords of the Committee for the affairs of Jersey and Guernsey, dated the 7th of this instant March in the words following, viz.:—Your Majesty having been pleased, by your Order in Council of the 12th of June 1728, to refer unto this Committee the humble petition of Philip Le Geyt, William Dumaresq, and George de la Bere, setting forth their having appealed from a sentence passed in the Royal Court of the Island of Jersey on the 20th of April 1727, in favor of La Laude Magon, Le Balue Magon, and De Premeny, French, owners of some East India goods brought into the said Island, and also in favor of William Noble, Master of the Shallop, on board which the said goods were seized, upon an information filed by the petitioners against the said Magon and others, to have the said India goods condemned, one moiety to Your Majesty and the other moiety to the informer, by virtue of two Acts of Parliament, of the 12th of King Charles the Second and the 7th of King George the First, as being imported into the said Island contrary to the said Acts; and complaining of several extraordinary proceedings during the hearing of the said cause in the said Courts, particularly with regard to the said Courts ordering and admitting several of the witnesses for the French owners to bring their evidence ready written into Court, notwithstanding the petitioners objected thereto, and then not making any entry of such order on record, and afterwards preventing the petitioners from cross-examining such witnesses, as to such points as they apprehended material in the said cause; and therefore prayed that the said sentence might be reversed, and relief granted them in the premises. And your Majesty having been pleased by another Order, of the 6th of November 1728, to refer unto this Committee the humble petition of the said La Laude Magon and the other respondents in this appeal, praying that so much of the above mentioned petition as relates to interlocutory proceedings before the final judgment was given may be discharged, and that the appellants may be confined to the matter of their appeal from the said final judgment. The Lords of the Committee, in obedience to your Majesty's said Orders, this day took both the said petitions into their consideration, and heard all parties therein concerned by their counsel learned in the law; and it appeared to their Lordships that several of the witnesses for the respondents had been admitted in a very extraordinary and unprecedented manner to bring their evidence ready written into Court, and that the appellants had not been allowed free liberty to cross-examine such witnesses, and the Court had not entered on record several resolutions or orders they had come to upon the objections which had been made thereto by the appellants, by means whereof the appellants had no opportunity to show by the record whether they had demanded an appeal to your Majesty from such proceedings. And their Lordships, considering that the evidence,

thus taken, is the foundation of the sentence passed by the said Court, are humbly of opinion that the said sentence ought to be reversed, and that the said Royal Court should be directed to proceed to a new trial of this cause, and that the witnesses on both sides be examined in Court, *vivâ voce*, with liberty to each party to cross-examine all such witnesses, and to reduce their evidence into writing, after they shall be so respectively examined; and that the said Court should, within three months time, proceed in a legal manner to hear and determine the cause, and give judgment therein according to law, with liberty to either party, who shall demand the same, to appeal therefrom. And that, whatever resolutions the Court shall come to during the course of such new trial, they do enter up the same by way of order, if desired or insisted upon by either party, so as to appear upon the Acts of the Court. And that this should be a general standing order, to be observed, not only in this cause, but in all other causes for the future. And that the said Royal Court should be commanded to pay a strict regard to the due observance thereof, and not presume in any case to deviate therefrom. His Majesty this day took the said Report into His Royal consideration, and was pleased, with the advice of His Privy Council, to approve thereof, and to order, as it is hereby ordered, that the said sentence, passed in the Royal Court of Jersey on the 20th of April 1727, be reversed, and that the said Royal Court do proceed to a new trial of this cause, and examine the witnesses on both sides in Court *vivâ voce*, and do give liberty to each party to cross examine all such witnesses, and do reduce their evidence into writing, after they shall have been so respectively examined; and that the said Court do, within three months' time, proceed in a legal manner to hear and determine the cause and give judgment therein according to law, and allow liberty to either party, who shall demand the same, to appeal therefrom. And that, whatever resolutions the Court shall come to during the course of such new trial, they do enter up by way of order, if desired or insisted upon by either party, so as to appear upon the Acts of the Court; and that this be a general standing order to be observed, not only in this cause, but in all causes for the future. And the Bailiff and Jurats of His Majesty's said Royal Court of Jersey, and all others whom it may concern, are to pay a strict regard to His Majesty's pleasure hereby signified, and not presume in any case whatever to deviate therefrom."

1636. You think that that is inconsistent with the present method?—Our evidence is not given strictly *vivâ voce*.

1637. It says that it is to be given *vivâ voce*, and taken down in writing. The essential point of difference between the two systems, as at present adverted to, is that, though in each case you have the evidence taken *vivâ voce*, and taken down in writing, the enditement or inquest to try does not hear it. The evil, which caused the reversal of the judgment, is not that the enditement or grande enquête did not hear it, because there was none, but that the party brought the evidence into Court ready written, and merely handed it in.—Yes.

1638. The informality, upon which this appeal was taken, was that the witnesses came into Court with a statement on paper, and handed it in. The Privy Council say, that is an incorrect mode of taking evidence; and they direct then that evidence shall be given *vivâ voce*. Before the enditement, no evidence is now taken at all; but the evidence, which has been taken *vivâ voce*, and transmitted to writing and subjected to cross-examination on behalf of the party, is read over to the enditement; so that the evidence is taken in accordance with this very order which you have now read.—Except that it is not before the jury. That is very important; the single reading of evidence in a long cause is not sufficient. It struck me that the expression "in all cases" covers every cause that comes into Court. If the Commissioners will look at the subsequent Act they will see that that is so.

1639. Mr. *F. Godfray* (Greffier).—You will see that the depositions had been taken in writing before the Bailiff and two Jurats, and finally it came before the whole Court.

1640. (To the *Viscount.*) The point of divergence of the two systems is, not the original taking of the evidence, but, after it is so reduced to writing, whether, after that, the enditement or the grande enquête, when they try, should hear or see the witnesses then.—Yes.

1641. Mr. *Dupré.*—If I understand right, the Vicomte supposes this to apply to a case before the enditement, and that in virtue of that order the evidence ought to be heard *vivâ voce* before the enditement. I do not think it extends to that. The kind of cases, to which this refers, never comes before the enditement; they are always tried before an inferior number first, with an appeal to the full Court.

1642. (To Mr. *Dupré.*)—Assuming for the present that the Vicomte is right in giving the larger interpretation to the concluding sentence, do you agree with him in saying that that would require that the enditement or the grande enquête should hear the evidence *vivâ voce*?—I do not. The evidence now is always given *vivâ voce*, and taken in writing, with the liberty of cross-examination. Every part of the order is complied with. In this very case, as the result of the appeal shews, the evidence in the cause was heard before the Bailiff and two Jurats, and afterwards read to the full Court, who gave judgment on the 14th of April, 1730; against which there was also an appeal to the Privy Council, but not grounded upon an objection to the mode of taking the evidence.

1643. When the new trial was had in consequence of the order, the depositions were so taken?—Yes.

1644. You think that, in that particular instance, the mode pursued upon the new trial was, that the evidence was taken in writing from the *vivâ voce* depositions of the witnesses before the inferior number, and those depositions so taken were read to the full Court?—Yes; and we should pursue the same course in other cases of a similar nature.

1645. (To the *Viscount.*)—However the law may stand at present, whether evidence may or not legally be taken before the grande enquête or the enditement, you think it ought to be taken *vivâ voce*?—Yes.

1646. You think that the jury who decide should hear the evidence and see the witnesses?—Yes; and for that I have Messrs. Dumaresq and Hémery and Le Geyt with me.

1647. Do Messrs. Pipon and Durell advert to that?—I do not think that they do.

1648. What is the reference to Messrs. Hémery and Dumaresq's work?—Page 44, the last

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passage of the first paragraph; that is a mere translation of Le Geyt; but they assume it, I take it, by quoting it.

1649. Were you here, when Mr. Marett gave his evidence upon this subject?—Yes.

1650. You were not convinced by that?—I was not.

1651. Nor of course do you agree with Mr. François Godfray, who was for retaining the present form?—No; I am not of that opinion.

1652. Looking to the effect that the trial by enditement has upon the prisoner, do you think that the course of proceeding is favourable to him or against him?—It may leave a stain upon his character. Supposing twelve men find him guilty of a crime, and he appeals to the grand jury, who absolve him, thirty or forty years afterwards, when the case is not clearly known, the record remains upon the books of the Court, his family may be taunted with his having been found guilty of murder or theft or any other crime, and that record remains against him. It is a stain upon his memory.

1653. That perhaps would be an objection to two trials in any case?—Yes.

1654. Therefore the extent of your objection is against a second trial?—Yes; I prefer Messrs. Dumaresq and Hémery's proposal to have but one jury.

1655. If a person were committed merely for the purpose of trial, the only entry would be that he was committed to be tried, and the record would show that he was acquitted?—Exactly so.

1656. Is your office an office of emolument?—As Vicomte, I have a salary from the Crown of 100*l.* a-year, old currency.

1657. Are there any other paid officers, connected with the Cour Royale?—The Bailiff, the Attorney General, the Solicitor General, and the Greffier of the Royal Court.

1658. What is the Government salary of the Attorney General?—I think, it is 100*l.* a-year, the Solicitor General 50*l.*, and Mr. Greffier 40*l.* The salary of the Bailiff from the Crown is 300*l.* a-year. The Denunciator also has a nominal salary of about 7*s.* 6*d.* yearly.

1659. Are those salaries paid from the revenues of the Crown or from the fees of the Court?—From the revenues of the Crown.

1660. Are you aware whether those salaries have been the same for a great number of years, or have they been increased of late years?—I think, they have been increased. A change was made in 1791.

1661. You are aware that the duties of Attorney and Solicitor General are very heavy?—They are.

1662. Can you state, upon your own knowledge of criminal proceedings, whether they have increased very much of late years?—Undoubtedly.

1663. Within the last thirty years have they done so?—I think, a very clear date is since the introduction of steam here. There has been an immense increase of population since that time. It began at the close of the war, and has been especially the case since the introduction of steam.

1664. When would that be?—Since the year 1824.

1665. Since that period, has the number of English residents in the Island greatly increased?—Very materially. I could show you that accurately by a reference to the census.

1666. And the number of visitors also?—Undoubtedly. All ranks and classes, high and low.

1667. From this increase in the population, some of which of course is not of the very best sort, are you able to say whether crime has been very much on the increase in the Island during that time?—I should certainly say so. I do not know that proportionately crime has increased; but the number of cases has increased. If the population has increased, from twenty five thousand to fifty thousand, the number of crimes is very much greater. I cannot say whether the proportion of crimes has increased.

1668. Should you say that the number of cases has doubled?—I should think so; but I can show how that is from the prison returns.

1669. I need not ask you whether the duties of all those officers would not be considerably increased?—Undoubtedly they would.

1670. You proposed to give the Commissioners some information about the grande enquête. From what source do you suppose the grande enquête to be derived?—I beg you to turn to Rouillé, De Suyte de Meurdre, c. lxviii. folio 91. "Telle enqueste doibt estre faicte par vingt et quatre loyaulx hommes au moins, qui ne soient pas souspeçonneux par amour ne par haine."

1671. The suit was the action of the private person who was injured; the next of kin appears to have had a right to sue by challenging the man whom he had accused of murder. If nobody sued, then justice interfered. The Coustumier has it: "Se aulcun n'est qui face suyte ne clameur de meurdre, et aulcun en est blasmé communemēt, il doibt estre arresté par la justice, et mis en prison jusques à vng an et vng jour, à peu de menger et de boire, s'il n'offre, dedens ce, à soustenir l'enqueste du pays." *Suyte de Meurdre*, folio 90.—We have cases, where a person has refused to stand an inquest of the country. Then the Commissioners will find it is said, "Et sil la veult soustenir, la justice y doibt pourueoir, et faire semondre ceulx que elle cuydera, qui sachent aulcune chose du meurdre de quelque lieu quilz soient et quilz viennent soudainement et despourueumēt sans sçauoir pourquoy ils sont ainsi mandez par justice, pour et affin que les amis de cil, qui est en prison ne les divertissent corrūpent ne facēt ou dyent aulcune chose, soit par prière ou par loyer ou par quelconque aultre moyen illicite, qui puisse empescher ne retarder, que justice ne soit faicte et accomplye. Si doibt len appeller chascū par soy pardeuant quatre cheualiers qui ne soient pas souspeconneux et enquerir diligemment se cil qui est en prison detenu a faict iceluy meurdre."

1672. I understood some gentlemen to say that the Jurats are the body who are placed by the constitution of King John in the place of the quatre chevaliers?—Yes. And it strikes me,

that, in this Island, it comes within the range of historical probability that, previously to the time of King John, the four Fief Hauberts were created here to form a Court.

1673. Mr. *Dupré:* There is a fifth. They are St. Ouen, Rozel, Melleches, Saumarez, and Trinity.

1674. Mr. *Hammond:* It was a question whether Trinity was one of the Fiefs Hauberts: but we find, by a document in 1513, that there was an enquête, where it was declared that it had been held by that tenure. Therefore in effect it was decided to be a Fief Haubert.

1675. (To the *Viscount.*) Will you proceed?—"Et quand len aura ouy leurs dictz et mis en escript, cil qui est en prison doibt estre amene deuant eulx, et luy doibt on demander s'il en veult aulcuns saonner. Et sil dict sur aulcūs deulx suffisant saon, chose, que dyent ceulx, qui sont ainsi saonnez, ne doibt estre en rien comptée. Mais se le saon ne est suffisant, ce qu'il dira sera receu avec les aultres."

1676. To go back to what you have been saying with regard to the enditement, we do not find any trace in Rouillé of any proceeding by enditement?—In the Style de Proceder you do.

1677. That is assuming that the Style de Proceder bears upon it. Leaving that out of the question, Rouillé is now treating of the mode in which murder is proceeded against when there is no relation of the murdered person to make suyte. The suspected party is to be kept in prison upon bread and water for a year and a day. If you look in the notes you will see he is to be tormented to make him confess. If within a year and a day he does not confess, I apprehend it would be for the Court to detain or set him at liberty. If, on the contrary, he likes to get out of prison before this, he is to submit to the inquest of the country; not to take the benefit of it as at present; but he submits to the inquest of the country. And the inquest is summoned: but there is no trace of any proceeding by enditement.—No.

1678. The note here is: "Par ce texte doibt on noter q̃ saulcun a esté meurdry et ses amis ne font point de suyte, et que ils en delaissent la suyte à la justice, justice de son office y doibt proceder en cette manière, cestassauoir que cil, qui est accuse du crime, doibt estre arresté et mis en prison. Et se doibt justice informer du cas; et icelle information veue et deliberée par justice et par les conseulx du Roy, ainsi quil est acoustumé, on le doibt mettre en questions et en tourmentz, ainsi qu'il est acoustumé à faire, cestassauoir ou plus ou moins selon ce quil est plus clerement trouvé coulpable par information, et selon la faculté et puissance de son corps, et au regard de sa renomée. Et se il confesse le cas, on le juge selon sa confession. Et jasait ce que le texte ne déclare poinct en ce pas, que len doye mettre en tourmentz cil qui est accusé de tel cas, si le y peut on mettre, et ainsi est usé et gardé notoirement. Et la cause pourquoy le texte n'en parle est pour la diuersité et variation des questions et tourmentz, qui y sont cōuenables en tel cas. Et aussi pour ce que ce sont procés ordinaires, qui gisent et démeurēt en la discretion de justice, à les faire ou plus ou moins, ou à les cesser selon ce que les diuers cas le requierent. Et si peut on dire, que telles destresses peuēt assez estre entendues par le texte, qui met que on doibt tenir en prison cil, qui est accusé de tel crime, jusques à vng an et vng jour à peu de boire et de menger lesquelles choses supposent destresse. Ou len peut dire q̃ le texte en faict ailleurs mençion et mesmemēt où il met que jadis quād femmes estoient accusées d'aulcun crime, et elles n'auoient qui les défendist, cest à entendre par forme de gaige, elles s'enpurgeoient par feu et par ignise. Sur quoy, on peut entendre les questions, et tourmentz acoustumés en tel cas, ainsi que plus à plain est declairé en chapitre, qui de ce faict mencion. Et pource nen parle point le texte en ce pas." Then there is another passage with regard to torture. "Ou len pourrait dire, que se le texte ne parle point en ce des dictz tourmentez, c'est pour ce que en ce chapitre il n'entend traicter, fors seulement des procés coustumiers qui se font en cas criminel, par especial en cas de meurdre, cestassauoir du gaige de bataille, et des enquestes qui sont accordées et ottroyées à ceulz qui les attendent en telles matières, et non point de procés extráordinaires, que justice faict de son office par questions et tourmentz comme dict est. Et oultre len doibt noter que si cil, qui est accusé, veult attendre lenqueste sur le cas, et elle luy est ottroyée, on y doibt procéder ainsi et par la manière, que le texte declaire. Toutefois nest il pas à entendre, que se l'accuse démande l'enqueste que justice soit subjecte et abstraincte de luy accorder et cesser les tourmentz tantost quil la démande. Car se justice voit quil soit expédient de lui ottroyer l'enqueste, elle lui accordera." There is no mention of any process by enditement.—I think it can be made out that they have tried them with twelve men as well as twenty four.

1679. (To Mr. *Dupré.*) Do you consider this to be law now?—The practice is quite different.

1680. What has changed it?—It is impossible to say.

1681. What the Commissioners want to learn is this, whether they are correctly informed that the law may be found in Rouillé, except as altered by special enactments?—We differ in our practice in many respects from the old law of Normandy.

1682. Some of the Ordinances by the kings of France, which are since the separation, represent your law better than the Coutumier?—Yes.

1683. The Commissioners have been referred to a book which they are told is law in default of other Ordinances. They find that there is much in that book which is not law; but they cannot find any other Ordinances. What has been said as to Suyte de Meurdre would apply to nearly all other criminal processes that we find in the Coustumier?—(The *Viscount.*) Surely that is law which is consecrated by time.

1684. (Mr. *Dupré.*) In 1503 a fire destroyed the records of the Court. It is now impossible to find out how and when the change took place, because our records are so recent.

1685. (The *Viscount.*) The records of our legislative Acts were all burnt previous to the year 1503.

1686. (To Mr. *Dupré.*) In endeavouring to ascertain the law as it stands now, the Coustumier is a very insufficient guide?—It is not altogether a guide.

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1687. (The *Viscount.*) It is the basis of most of our laws. Formerly, up to 1771, th Court had the power of making Ordinances: and the Court of Guernsey has preserved that power to this day.

1688. I understand the Solicitor General and yourself to say that the form of proceeding now differs exceedingly from the former practice. You are aware that an appeal of murder might be tried by wager of battle, by the law of England, up to within a very recent period, and that it was necessary to have an Act of Parliament to repeal that law. You say that certain laws are not obsolete, but that they have been changed, most likely by orders of the Court, the Court having then a legislative power, and that it is probable the course of proceeding has been changed by Ordinances of the Cour Royale, which have perished in the fire which took place in 1503?—Yes. There is one instance, where they directed that, if the six sermentés did not agree, there should be twelve.

1689. What was the time that the Cour Royale was deprived of the power of making such ordinances?—It existed till 1771. All Ordinances were then set aside, except those which had received the Royal Assent.

1690. Then, among the records from 1503 up to 1771, one would expect to find Acts of Court, which would have the force of law and bear upon these points?—Yes.

1691. Here is an inquest in 1646, taken on a murder, which has been given us by the Greffier,* the jury consisting of the constable of the parish and the people mentioned. The grande enquête is not there claimed as a benefit, or as a Court of Appeal; but the prisoner submits himself for his purgation to the inquest. That is conformable to the words of the Coustumier?—Precisely so. Terrien in the Chapter De Veues, Lib. XII. c. 18. p, 502, mentions the quatre Chevaliers. Then, in the note, he tells us, "Ceste veue par la Coustume se faisoit par quatre Cheualiers, et par la Justice." To return to the mode of summoning the grande enquête, the commentary at the foot of folio 91 of Rouillé has this. "Sur ce texte doibt on noter que en enqueste de crime de roberie ou de larcin ou d'aultre malfacon, on a acoustumé de prēdre de trois paroisses: cestassauoir de celle, où l'acusé a converse, et celle ou il fist la roberie, et de la prochaine paroisse de celle où il a conuerse. Et la cause pourquoy on prent de trois paroisses est dessus declairée, toutesfois la tierce parroisse demeure en la discretiō de justice: car le text ne faict mention quil en soit requis nécessairement que deux, et en meurdre que une. Et pour ce jasoit ce que len ait acoustume à prēdre de trois paroisses en tel cas; neanmoins se justice ensuyvoit le texte, et procedoit selon iceluy sans faire si grandes soleñitez ce ne seroit pas mal procédé. Et le pourroit justice faire se elle veoit quil fust expédient. Mais pour la grandeur des cas, on a accoustumé à procéder ainsi solennellement."

1692. This is quite your own law, except that you take from the parish where the crime was committed, and the two neighbouring parishes?—Yes. There is, however, a curious deviation, which ought to be given. "Se alcun est accusé de roberie ou de larcin, et il estoit de Angleterre ou daultre estrange pays, et y auoit tousjours converse, pour quoy on ne pourroit pas auoir en acomplissant le texte des gentz, ou il auroit converse en la paroisse: il suffiroit de prendre des lieux, où la roberie et larcin auroit esté faict. Car le texte, qui parle, que on prenne de ceulx où laccuse a converse, s'entend, se on les peut avoir, et non aultrement. Et par semblable conuiendroit faire se ung homme estoit accus de meurdre, et il avoit faict le meurdre en estrange pays."

1693. Then they tried a man out of the jurisdiction, according to that. Supposing a man committed a murder in England, would you try him in Jersey?—We should send him back to his own country. If a murder was committed on the high seas, and the vessel came into Jersey, we should try the case. To return. Then follows, in Rouillé, the mode of delivering the verdict, which also corresponds with the present mode. It is quite clear that the verdict of the members of the enquête was always kept secret. I beg leave to refer the Commissioners to a passage in Le Geyt's manuscripts, vol. I. p. 447. "Si les hommes de veue doivent faire leur Rapport en public." In proceeding to follow Rouillé and the grande enquête, at the foot of that passage just cited (likewise at folio 91), we find, "Item len doibt scauoir que le texte qui met en la fin, 'Et ce que les vingt diront soit garde et cetera,' que il fault vingt jureurs à ung acord pour condemner l'accusé, et la raison est pour la grādeur du cas: toutesfois use len que se la greigneure partie est à ung acord quil suffit pour condemner laccusé." That would be the thirteen men that we still retain in the enditement out of the twenty four.

1694. You think at this time thirteen could have condemned?—No doubt of it, by that passage. With Hémery and Dumaresq I hold it to be objectionable that the men of the grande enquête should be named by the public prosecutor. I do not object to the way in which the Attorney General exercises this duty. No man can be more fair or more impartial or more humane; but the jury, I consider, should not be selected by any man. It should be drawn for by lot. I think that the grande enquête, in this Island, is almost over favourable to a prisoner. Its members are always men of the first consideration in the country. They are warned late at night, commonly too late to have a chance of conferring together: and, wherever I have sat with them, I should say they are most patient in their investigation, and very mercifully inclined. I have known an instance where a juryman changed his opinion to the side of mercy in his way from the chamber to the Court. Indeed, I think, in the present state of mind with regard to passing sentence of death, there are so many individuals who object to death as a punishment, that I hardly think you would find twenty four men now who would consent to give a verdict which would subject a person to capital punishment.

1695. In spite of their oath?—I think, the oath is on their side; they would find according to their conscience.

1696. Their conscience would oblige them to say whether the man were rather guilty than innocent of the fact.—In the working you would not find it so.

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* Vide ante, p. 104, where the proceedings are set out.

1697. You think it would be very difficult to find twenty men out of the twenty four who would agree to a verdict of Guilty where the punishment would be death?—In the case the other day, I heard very able men say they would not find a man Guilty on such evidence as that.

1698. Mr. *Dupré.* Out of the five last trials for murder two were found Guilty.

1699. (To Mr. *Dupré,* Avocat Général.) Do you ever try libels by a purely criminal proceeding?—There was one case.

1700. Supposing, for example, it was said, that the Government sent over troops in a boat which they knew to be leaky. Would that be tried by a cause en ajonction?—That would be a purely criminal proceeding.

1701. Inciting soldiers to desert, or a libel against the Government: how would such offences be tried?—They would be tried criminally.

1702. (To the *Viscount.*) What do you think of the composition of the grande enquête or enditement in matters that may involve political disputes or party feeling?—I do not recollect a case of libel before the grande enquête. I should think, in a case like Mr. Lemprière's, who was the leader of one of the great parties in this island at that time, Mr. Dumaresq and his friends being the leaders of another, if one of their party had been brought before a grand jury, and evidence taken, he would have stood a great chance of being found Guilty.

1703. The moment it became an important political case, the Procureur Général would naturally feel a very strong bias on the part of the Crown. There would be, at all events, a risk of a suspicion of partiality?—Certainly.

1704. With the enditement a libel case would involve some suspicion?—That goes back to my feelings when I was a constable. Necessarily the first duty of a constable was, on finding himself in power, whenever he could secure an addition to his party by putting in one of his own friends as an officer, not to fail to do so; at least I never did. I took very good care that all my friends were put into power, and to exclude every one else, as far as I possibly could.

1705. Those would be the materials out of which the enditement would be constructed?—No doubt.

1706. Supposing the case of a violent article in a newspaper upon the Police generally, which no policeman could make a cause en ajonction?—It would not be quite safe to try the man before that particular Police.

1707. (To Mr. *Dupré.*) Would the enditement sit upon a purely criminal libel in the first instance?—Undoubtedly they would. Private libels would not be brought before them.

1708. (To the *Viscount.*) Have you anything to add as to the method of summoning the grand enquête?—I believe, I have stated that I think it ought to be by lot.

1709. Do you think that both processes, the enditement and the grande enquête, are necessary?—I think that one jury would be better, for the reasons I gave, that a man, who is convicted by the petty jury, though he may have a better chance, yet, the record remaining, that he is found Guilty, is more or less a stain upon his character. His friends could always be told that twelve men had found him Guilty.

1710. Which of the two do you think it would be more safe to dispense with?—I have not given my attention sufficiently to that. I should like to consider the question further.

1711. To what extent is the English language prevalent in this island?—In the town every body can speak English; but the vernacular of course is Jersey.

1712. Have you had any means of judging how far that has spread into the country?—When I returned from the Island of Curaçoa in 1814, I married and settled here. We then found that there was no Sunday school in the parish. When we did set a Sunday school on foot, we found there was scarcely a child in the parish who spoke English. My mother and a number of ladies and gentlemen, upon instituting one of those schools, gave English testaments and other prizes to those who should learn English soonest: and in the course of ten years such a change took place that, I believe, there were very few children, in the whole district of St. Aubin, who did not speak English, and probably in the whole parish now.

1713. What is the name of the parish in which Grosnez is?—St. Ouen's. I rather believe that there is an English school now in every parish of the island.

1714. On one occasion, when we were there, we could not understand an old woman in a cottage: and her daughter, who was quite a child, came forward and interpreted.—I do not think there is a child of any of the principaux who cannot speak both English and French.

1715. Are there also French Sunday schools in the parishes?—Yes, in St. Brélade's. We have an English Sunday school at St. Aubin's, and a French Sunday school at St. Brélade's.

1716. Do you suppose there is a French Sunday school in every parish?—I think there is.

1717. With respect to the communication with England: it is very common now, of course?—It is constant.

1718. Do you think the communication with England is more constant than with Guernsey?—I should think very much more. Here is not very much business carried on between Jersey and the other Channel Islands.

1719. I observed, the other day, that sentence was passed upon the prisoner in English?—That was upon an English prisoner.

1720. Have you any means of stating what proportion of sentences are passed in English to those passed in French?—I cannot recollect that. The prison returns will show it.

1721. In the case of English prisoners, they hear their own defence conducted in a language which they do not understand?—Of course.

1722. As to the depositions, they have no means of instructing their counsel as the case goes on?—The counsel here all speak English and French.

1723. But the prisoner himself, if, in the course of the counsel's remarks, he heared something which suggested to him, the prisoner, an important point of defence, would have the means

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J. Le Couteur, Esq., Viscount. 12 September, 1846.

of checking him. In England he has.—Here he has not; he relies entirely upon his counsel, if he does not understand the French language.

1724. It is left to the ingenuity of the very able gentlemen who here defend prisoners to think of it themselves?—Yes.

1725. When the evidence of the English witnesses is taken down in writing, the accused hear the evidence given in English, and their counsel hears the interpretation into which it is transfused when it is put on the notes?—They write the very words that are spoken.

1726. When English evidence is given, is it taken down in English?—Invariably, either in Court, or, if leaving the island, before the Vicomte.

1727. When French evidence is given, the counsel for the prisoner who attends of course interprets it to the prisoner?—Yes.

1728. The evidence of an English witness in taken in English and read at the enditement and the grande enquête in English?—Yes, in all cases. If any of the enditement do not understand English, the Procureur Général translates it to them.

1729. (To Mr. *Dupré.*) Is there any sworn interpreter?—Not for English and French. In the case of any other languages there would be.

1730. Have you turned your attention to the extent to which the Police protects the streets?—Generally I have, since I held the office of Vicomte; and those recent cases of murder have drawn my attention to the subject.

1731. What is the general opinion you have formed upon their efficiency as a means of protection?—As a detective police, I would honestly say that, during the time I was constable, and in my experience while I was a Jurat, and since I have been Vicomte, I have always found the whole Police ready to attend to my orders, or to support me in any way that was required by me in my official capacity. They are a very zealous, energetic and active body of men. But there, I think, is pretty much the limit of their efficiency. We have no protective police in Jersey. We have nothing to be compared to the London Police; nothing to anticipate and to prevent a crime. We have no men whose business it is to be out all night watching. The Commissioners heard from Mr. Chevalier what very hard duty he has to perform occasionally as an unpaid officer. Mr. Chevalier is a most efficient and excellent police officer. Still, but for the peculiar circumstances of Nicolle's case being discovered by an accidental circumstance by one of the subscription watchmen, if it had not been for that man's evidence, I think, he would not have been traced to his house. It appeared to me quite the leading evidence in tracing him. I have heard gentlemen say they were obliged to sit up, and that their friends have been obliged to sit up and watch their houses at night. There was an instance lately of a gentleman's house which was attempted to be burned, Captain Groombridge's. A paid Police, that would be patrolling the town in the night, and a paid Police walking about the harbour at night, would prevent a great number of crimes committed by boys in the first instance, and by an organized set of thieves that we have had here for a great number of years. I think the importance of this town is so great, and its commerce is so extensive, that it requires a police force, such as they have in London. I am the more convinced of this, because in the island of Curaçoa, where my father was Commander in Chief and Governor, robberies were carried on to an enormous extent while the old Dutch Police was in existence; and he framed a system, antecedent to that in London, precisely on the same principles, young men, from twenty four to thirty five years of age, placed under a superintendent of Police: and in one month the whole system of thieving was put down. The security of the town was completely established.

1732. At present, it would seem that, the greater the respectability and the higher the station in life of the gentlemen who perform those gratuitous functions of police, the less reason there is to expect them to be about the town in the way required?—Undoubtedly. But it must be well understood that it is a distinction; it is a mark of the confidence of their fellow citizens, and a position of honour. Let the party be what it may, the man who is selected by his party is looked up to for some excellent qualifications; and they generally are as sober and steady a body of men as are to be met with in the world. The very admirable order which was kept in this immense town, with the vast population assembled in it on the late visit of Her Majesty, could not fail to strike every reflecting mind. There was not a quarrel; there was the greatest possible order; and the Police behaved with entire courtesy.

1733. They had the assistance of special constables on that occasion, had not they?—Yes, a great many; and the whole of the militia were out. I suppose there were three thousand men under arms, artillery and infantry.

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Mr. David Bromer.

Mr. *David Bromer* further examined.

1734. The Commissioners understand that you wish to make some observation to them?—While incarcerated in prison for the first six or eight months, there was no regulation to prevent the debtors speaking to felons; and I have repeatedly been asked advice before they went to Court; and, when they returned, they have stated that they were not aware of the accusation against them, as they spoke English exclusively; nor did they know their sentence when they returned. And also in defending them, as I have been allowed, through the kindness of one or two officers of the Court, occasionally to act for people, I have often experienced the same. I have repeatedly seen men sent back from the Court through the absence of advocates; and that is a very serious inconvenience, particularly when the Crown Officers are absent.

1735. The *Viscount.* No one but the chief magistrate could permit Mr. Bromer to act or to speak.

1736. (To Mr. *Bromer.*) You mean, by their being sent back, that their trial has been put off on account of no advocate being there to defend them?—Yes.

Mr. *Francis Godfray* (Greffier), further examined.

Mr. Francis Godfray, Greffier. 12 September, 1846.

1737. Have you the actual depositions which were taken in Nicolle's case? Will you produce the deposition of John Weston?

*The same was produced and is as follows.*

(*Fac simile.*)

"On the 23rd day of January, 1846, and to the same purpose, Mr. John Weston, aged 45 years, has deposed upon oath as follows. On the morning of the 9th of the present month, as deponent was employed ~~to watch~~ the brook in Church Street, where a drain was being made, soon after the clock struck two, he heard the footsteps of persons running down Library Place. He went in that direction; and opposite to the Library, saw two men, ~~one of them of the ground and th~~ the prisoner at the bar and Mr. Seward. The said prisoner was down on the ground; on coming up to them, deponent placed himself between them, and desired Mr. Seward ~~to desist, which he did,~~ not to strike him, he replied, I will not, and went back towards his house. Deponent then told the said prisoner to get up, and go home: he got up, and in going ~~by Brook Street,~~ he said, I will give him a lesson. He went by Brook Street, and deponent returned to his place of watch; a few minutes after that, deponent heard the report of a gun; he went towards Mr. Seward's house, deponent met him, Mr. Seward, coming out of his door, and asked him what was the matter. He replied, that fellow has shot two persons in my house. Deponent went into the house, and saw a man shot, sitting on the floor with his head ~~on the shoulders~~ supported by ~~a man~~ Mr. Jeffries. Deponent asked Mr. Jeffries where he was shot. He said ~~in the back through the lungs,~~ through the back and lungs.

Did the said prisoner say anything more than what deponent as already stated?—Not that deponent heard.

Questions by the Prisoner.

Was the weather very dark at the time deponent as alluded to?—Not very dark.

Mark of
⋈
John Weston."

1738. What is the history of those alterations?—They must have been mistakes in the first instance.

1739. Are those depositions read to the witness?—Yes; this deposition must have been corrected in the presence of the witness. This was written by Mr. D'Allain.

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Mr. *Hugh Godfray* further examined.

Mr. Hugh Godfray.

1740. You were Dénonciateur?—Yes.

1741. Have you acted for the Greffier occasionally?—Yes, and for the Deputy Viscount.

1742. Were you present when these depositions were taken?—Yes; and I am certain that the man did say that the witness desired Mr. Seward to desist, which he did.

1743. That is as it originally stood?—Yes; at that time I remarked to myself that Mr. Seward was in the wrong.

1744. It struck you, on hearing the evidence, that that was a point in Nicolle's favour?—Yes.

1745. The witness gave the evidence in the form in which it originally stood?—Yes.

1746. How came it to be altered?—I do not know: it is the same hand-writing. Perhaps, in reading it again to the witness, the witness might have made him change it: but I know that originally he did say so.

1747. Will you tell us the mode in which these examinations are taken? Is an oath first administered to the witness?—Yes, by the Greffier, in the presence of the Court.

1748. Is the prisoner present?—Yes.

1749. Is the witness in a position to be seen by the prisoner?—Yes, quite close. There is a small table before the Bar; and it is upon that table that the evidence is taken down in writing.

1750. After the witness is called and sworn, does he begin to make a statement of his own accord, or is there a question put to him by the advocates?—When a witness is called by the Attorney General he is questioned by the Attorney General.

1751. You call a witness an informateur?—Yes; against the prisoner he is called informateur à charge; and, when the informateur is called at the request of the prisoner, he is called informateur à décharge.

1752. Suppose a witness to be called by the Procureur Général, what is the first thing that takes place after he is sworn?—He is taken to the table, and stands by the écrivain, who is taking down the deposition in writing. Then the Procureur Général proceeds to question the witness, or asks him to state what he knows of the accusation. He then states it, and afterwards sits down by the écrivain, who writes down what the witness has said.

1753. Does the écrivain take it down from him as he delivers it?—No.

1754. He repeats it first to the Court, and then to the écrivain?—Yes.

1755. Is that in an audible voice in both cases?—Not when he repeats it to the écrivain. Very often the écrivain writes it down without the witness repeating it to him.

1756. This is supposing that he makes a statement without any question being put to him?—Yes.

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1757. After he has repeated it to the écrivain and the écrivain has taken it down, what takes place?—Then both the écrivain and the witness stand up; and it is read out by the écrivain to the Court.

1758. What takes place after that?—After that they generally proceed by questions.

1759. After it has been read by the écrivain to the Court, is the witness asked whether he agrees to it as the écrivain has read it?—No: it is read out, and of course, if it is not written as he says, he has a right to correct it.

1760. Is any question put to him?—No; sometimes the deposition is corrected when the Attorney General or the counsel for the prisoner find that it has not been put in exactly the same words as the witness had used.

1761. After he has made his statement, what takes place?—The Attorney General goes on with his questions.

1762. What is the mode in which the question is asked?—It is asked by the Attorney General, and it is written down by the écrivain.

1763. That being written by the écrivain, what follows?—The écrivain stands up by the witness, and reads it aloud to the witness and to the Court; and the witness then gives his answer.

1764. Is the same mode pursued with regard to his answer that was pursued with the question?—Yes.

1765. And so with the cross-examination?—Yes.

1766. The examination being concluded, what takes place?—The witness signs the deposition.

1767. Before it is signed, is it given to the witness to read over?—No; it is not required.

1768. Can the witness have it if he wishes?—Certainly.

1769. Before being signed by the witness, is it read over from beginning to end to him, that he may ascertain its accuracy?—It is not now; but I recollect, at the time when I first practised in the Court, that that was the case. As he has answered, each passage is read.

1770. But, when the evidence has been given, it is not all read over to him?—No. Before the deposition is signed, the chief Magistrate asks the Attorney General if he has any more questions to put to the witness. He also puts the same question to the advocate who defends the prisoner. They both of them, very often before they answer, require the deposition to be handed to them; and, on their declining to put any more questions to the witness, the deposition is put before him. He signs it; and it is handed by the écrivain to the Greffier, in whose custody it remains.

1771. I observe that, in the particular deposition which you have in your hand, there are several alterations. When an alteration is made in a deposition, by the witness wishing to amend or vary his statement, are the variations not signed by the witness deposing?—No. Those variations and interlineations had all been made before the deposition was signed.

1772. Is there any mark put to show that those alterations were made with the consent of the witness?—No; there is not.

1773. Neither the signature of the officer of the Court, nor any thing else?—No; there is not.

1774. Would not it be proper that there should be some means of verifying alterations in a deposition?—I think so.

1775. Have you ever looked to the method of taking affidavits in England?—I have seen English affidavits.

1776. With alterations?—Yes. We do it here also, when it is to send documents to England.

1777. Do not you think that method might be adopted with advantage in the depositions here?—Yes.

1778. The whole of the depositions in a case are not taken the same day?—No; they extend over several days; in this case over seven days.

1779. In the particular case of Nicolle, what intervals occurred between the days of taking the depositions?—The depositions in this case were taken on the 23rd of January, and the 27th; the 13th of February, the 18th, and the 20th; the 11th of March, and the 12th of March. Another deposition was taken, before the Deputy Vicomte out of Court, on the 3rd of February.

1780. In the order of time that would be the third taken?—Yes.

1781. How many witnesses were examined in this case?

1782. Mr. *Francis Godfray* (Greffier). On the 23rd of January, the first day, there were six witnesses heard. On the second day, that is the 27th, one of those who had been heard on the 24th was again heard, and ten new ones were examined. On the third day, there were two, who were recalled, and 15 fresh ones were examined. On the 18th, the fourth day, five were recalled, and six new ones examined. On the 20th, three new ones were called, and none recalled. On the 11th of March, one was recalled, and four new ones examined. On the 12th of March, three were recalled, and a new one examined.

1783. Then there was the one who was examined out of Court before the Deputy Vicomte: was that a witness recalled?—No; it was a witness who did not appear.

1784. How came that witness's evidence to be taken out of Court?

1785. Mr. *Hugh Godfray* (Dénonciateur). He was a Frenchman, and was about to leave the island.

1786. When a witness is about to leave the island, and his evidence is taken out of Court, is it taken in the presence of the Procureur Général and the prisoner?—Yes.

1787. With regard to these recalls, can you easily ascertain how many times the same witness was recalled?—Yes; that might be ascertained.

1788. When a witness is examined out of Court, who takes the deposition then? Is it taken by

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an écrivain?—No; the Vicomte, or the Deputy Vicomte. Sometimes it is before the Dénonciateur, who writes it down.

1789. On that occasion is any oath administered to the Deputy Vicomte, that he shall take the evidence down as it is given by the witness?—No; he does it on the oath of his office. Everything that he does, for which he keeps a record, is always under the oath of his office.

1790. With regard to the écrivains, who take down the evidence in Court, is any oath administered to them to take down the evidence correctly?—No.

1791. After the evidence is all taken down in writing, are the witnesses again sworn to the truth of it?—No.

1792. Before signing, they are not again sworn to the truth of their depositions?—No.

1793. The evidence is taken in the presence of the Bailiff and two Jurats?—Yes.

1794. Is the evidence of more than one witness taken at the same time?—Sometimes three, sometimes four; sometimes, at the request of the advocate for the prisoner, it is taken singly.

1795. In that case, is there a separate écrivain to take the evidence of each witness?—Yes.

1796. The Procureur Général asks the questions?—Yes.

1797. Does the Procureur Général examine the four witnesses all at once?—One after the other.

1798. Then it would not be contemporaneous, if it was one after the other?—He does not ask four questions at the same time; but the examination of the four goes on one after another. They put one question to one; while the écrivain is writing it down, another question is put to another witness; and so it goes on.

1799. That must tend to produce some confusion in the taking of the evidence?—It does sometimes. Each time the witness is recalled, he is sworn again, and the deposition of the former day is read to him before he is questioned further.

1800. You have told us that the écrivain is not sworn in the particular case to take the evidence; is there any general oath of office for the écrivain?—None at all.

1801. There is neither a particular nor a general oath?—No.

1802. The reliance is very much upon the vigilance of the counsel?—Yes; and the Court, who are watching also.

1803. Does the Court itself interrogate the witnesses at all?—Yes, sometimes.

1804. The Bailiff?—Yes.

1805. And the Jurats?—And the Jurats do. In my opinion it ought to be through the Bailiff; but very often they do it without. Thirty years ago, Sir John Dumaresq would not have allowed a question to be put, except through himself.

1806. In that case, is the question and answer taken down precisely in the same manner?—Yes; it is generally put, "question by the Court."

1807. Then the deposition would shew that the question was put by the Court?—Yes.

1808. Has the counsel for the prisoner a right to demand that only one witness should be examined at a time?—He has.

1809. Are the depositions taken down in the actual words of the witness?—As much as possible. I must say that some of the écrivains are not so shrewd or intelligent as they ought to be.

1810. You think inaccuracies occur from that, do you?—Sometimes; but they are generally corrected. Some may pass uncorrected.

1811. I observe that, in those depositions, the language is in no instance the witness's own. For instance, in this case, "Was the prisoner in the habit of shooting rats?" the answer is, "He has frequently heard the report of fire-arms." The witness would naturally say "I have frequently heard."—The witness said so, no doubt; but it is always put in the third person.

1812. Do the écrivains, to any extent, take upon themselves to put the effect of the witnesses' words in any other instance?—No; not otherwise.

1813. That is the only instance in which they intentionally vary from the very words?—Yes.

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Mr. *John D'Allain* examined.

Mr. John D'Allain.

1814. Are both the original and the alteration in this deposition in your handwriting?—Yes.

1815. Will you explain the alteration in the deposition?—The first alteration, I should say, was done in writing it over. The second, I think, was done after I had read it over to the Court and to the witness. I think I recollect now that, after having read it as it was, without the erasure, I do not recollect whether it was the Attorney General or the Court, or any other, wished me to alter that part, which I did. I think that was done after it had been read to the Court.

1816. Was it after the witness had signed it?—No. It was in reading it over, just after it had been written; in reading it over to the Court, the Attorney General or the advocate desired me to alter that part; which I did, and read it over to them again.

1817. Was it read, as altered, to the witness before he signed it?—It is always made a point, the moment there is any alteration, to read it over again to the Court, and to the witness.

1818. That was so in this instance, was it?—It was so in this instance, certainly.

1819. Are you confident that, in that particular case, the witness, before he signed it, heard it read over as altered?—Positive. I never alter a deposition unless it is read over again as altered.

1820. You say you are confident of that, because it is always done. Do you recollect, that it was so in this particular instance, or do you speak of your general practice?—In this parti-

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cular instance it was done. And, I think, I recollect that it was afterwards, in reading it, that some one made the observation, and I altered it, and read it over again.

1821. You are sure that all that was before it was signed?—Positive.

1822. This is not a copy from a draft which you made, but the original as taken down from the mouth of the witness?—Yes.

1823. (To Mr. *F. Godfray*, Greffier.) Upon none of those depositions, as I understand you, is there anything to verify their having been taken before the Court, excepting your custody, and the signature of the party making them?—Nothing.

1824. Supposing an officer were wicked enough to destroy the deposition and to substitute another, or supposing some one were to get into your office and do so, would there be any check against that?—No.

1825. During the time that the depositions are in your custody, has any body, on behalf of the prisoner or otherwise, a right to apply to you for copies or take copies of them?—Yes.

1826. Are those copies authenticated in any way by you?—Yes. Very often the advocate of the prisoner examines them; frequently he takes notes and takes no copies.

1827. I understand you to say that the prisoner would have a right to ask you for copies of the depositions?—Yes.

1828. Would those copies be under your seal or signature?—Yes, under my signature.

1829. "Au Greffe" would be written upon them?—My signature would be written upon them.

1830. Can they be copied in any other way?—Sometimes the advocates have their clerks to copy them in my office.

. Have the Advocates access to the original documents in your office to copy them?—Strictly speaking, they have no right to do so perhaps: but it is done.

1831. It is possible that essential alterations, in the shape of erasures or interlineations, might take place on occasions of that kind, is not it?—I have never seen an instance of it.

1832. Do I understand you to say that, during any time prior to the grande enquête, the prisoner may upon demand have copies of any of the depositions?—Yes.

1833. Is that at the expense of the prisoner, or are they furnished gratis, if the prisoner is unable to pay?—If the prisoner is able to pay for them, he is desired to pay for them: if not, they are given gratis. It is very seldom that a copy is required; generally the advocate takes notes.

1834. Supposing a prisoner, who had not the means of paying for it, wanted to obtain a copy gratis; can he do it by application to you, or must it be by the intervention of the Court?—He or his advocate may apply to me; and I will give it gratis.

1835. Is the intervention of the Court necessary to procure it?—No.

1836. He would have it as of right?—I should think so.

1837. (To Mr. *D'Allain.*) Are you clerk to any advocate?—No. I had been for some years.

1838. To whom?—To Mr. John Hammond.

1839. When did you cease to be so?—In the year 1832. I am still in the same office; we occupy the same office together. He has one room; and I have the other adjoining it.

1840. You have no connexion in business?—No.

1841. You left his employ in 1832?—Yes.

1842. Were you écrivain while you were in his employ?—No.

1843. Are any écrivains clerks to advocates?—Several to advocates, and to other écrivains.

1844. Do you mean that they act as écrivains, and as clerks to advocates and to other écrivains, at the same time?—Yes.

Adjourned to Monday next, at ½ past 10.

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*Monday, September* 14, 1846.

1845. The following Memorial, addressed to the Commissioners, was read.

A Messieurs les Commissaires Royaux siégeant actuellement en l'Ile de Jersey.

Mme. Rosalie Rabecq, femme de Mons. Philippe Mourant, de la paroisse de St. Sauveur en l'Ile de Jersey, la dite femme native de la Commune de Regneville, Département de la Manche, en France, très humblement remontre.

Que vers Pâques, l'année 1845, avant son mariage, elle était domestique chez le dit Sieur Mourant, depuis à peu près cinq mois. Mr. Jean Le Cronier, officier du connétable en la paroisse de St. Hélier, vint, le Samedi après Pâques, 1845, trouver la remontrante chez Mrs. Gillman, en la dite paroisse de St. Hélier, peu après le soleil couché, l'accusa d'avoir volé une pièce d'indienne, et qu'elle était de mauvaise vie, et lui ordonna de le suivre, ou, si elle ne le faisait pas, il irait chercher de l'assistance et mettrait la populace après elle. Comme elle savait qu'elle n'avait commis aucun crime, elle le suivit; et il la conduisit à l'Hôpital Général, en disant au directeur qu'il lui amenait une jeune personne, que ce n'était pas pour rien de mal, et de la soigner bien, et qu'il se trouverait qui paierait. La remontrante resta là vingt-quatre heures, et fut libérée par ordre du dit Jean Le Cronier, sans donner aucune raison par rapport à sa détention.

Quelques semaines après, le centenier Abraham Aubin, Jun., de la paroisse de St. Sauveur, accompagné de plusieurs personnes, fit des recherches des cinq heures du matin chez Jean Ollivier, pour saisir la remontrante, et ne la trouva pas: mais, vers les six heures du même matin, c'était un Mercredi, le centenier Chevalier, de St. Hélier, vint trouver la remontrante chez la Veuve Gillman, et la fit lever, et lui dit qu'il y avait eu un vol commis dans une grande maison à St. Sauveur, qu'elle avait été vue, avec un nommé Johnson, à la dite maison, à y voler; et que le dit Johnson avait été arrêté et mis en prison; et de venir avec lui voir si elle le reconnaîtrait; que cela ne la gênerait pas

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beaucoup; qu'elle n'y serait pas long tems. Elle répondit qu'elle avait été à St. Sauveur, qu'elle ne connaissait pas Johnson, et qu'elle n'avait pas entendu parler d'aucun vol: il la pressa d'aller voir ce prétendu Johnson, et l'emmena pour aller le voir à la prison. Arrivés à la porte de l'Hôpital, il la fit entrer, et donna des ordres à M. Jean Binet, le directeur, de l'enfermer, et que personne ne fût la voir; elle fut enfermée dans une chambre, dont les fenêtres étaient grillées, avec des femmes dérangées et de manuvaise vie, depuis le Mercredi matin, vers les six heures et demie, jusqu'au Dimanche, vers les huit heures du matin.

Le lendemain de sa saisie, le centenier Chevalier voulait l'envoyer à St. Malo. Elle refusa, d'autant que c'était loin de sa contrée. Elle lui observa qu'elle n'avait commis aucun délit ou crime; qu'elle voulait être présentée devant la Cour: le centenier Chevalier répondit qu'il n'en était pas nécessaire; qu'il agissait d'après les ordres du Général ou Lieutenant Gouverneur.

Le Dimanche matin, vers les huit heures, le centenier Chevalier, accompagné de M. Le Bas et de Phillippe Mourant, Jun., vint à l'Hôpital, et la fit monter dans une voiture avec eux, lui disant, que c'était pour l'envoyer à Granville. Au lieu de cela, ils la conduisirent à la Mare de Ste. Catherine, et la firent embarquer au bord du cutter la Rose, qui partit de suite pour Port Bail. Le centenier Chevalier, en la quittant, lui dit qu'elle ferait bien de ne pas revenir à Jersey, ou bien qu'elle se ferait envoyer à Botany Bay. Elle fut obligée de payer son passage.

Elle revint à Jersey, dans le mois d'Août, 1845, par la Mare de St. Catherine, où elle entra un peu de tems chez M. George Messervy. Elle a été informée que, environ dix minutes après qu'elle avait quitté cette maison, le centenier Sohier, de la paroisse de St. Martin, accompagné de plusieurs personnes, fut à la dite maison pour saisir la remontrante, et y fit des recherches très minutieuses en brisant ou enfonçant des portes. Le centenier Chevalier fit aussi des perquisitions dans la ville pour trouver la remontrante, entr'autres chez M. George Vardon.

Et la remontrante déclare de plus être prête à affirmer par son serment la vérité de faits susallégués.

Marque de + Mse. Rosalie Rabecq,
femme de Mons. Philippe Mourant.

*Jersey, ce* 10*me Septembre*, 1846.

Jn. Mourant, } *Témoins.*
G. N. Simon. }

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Rosalie Rabecq.

*Rosalie Rabecq*, wife of Mr. *Philippe Mourant*, examined through an Interpreter.

1846. Is that your mark, and did you send that paper to the Commissioners (*the foregoing Memorial being shown to the Witness*)?—I acknowledge this as my mark; and this document is a complaint which I sent to Her Majesty's Commissioners.

1847. Are you now married?—Yes.

1848. To whom?—To Mr. Philippe Mourant, of St. Saviour's.

1849. Is that the father of the Philippe Mourant, junior, who is mentioned in this memorial?—Yes.

1850. When were you married?—On the 18th of September, 1845.

1851. Where?—At St. Saviour's.

1852. In this Island?—Yes.

1853. There was no marriage ceremony abroad, was there?—No: it was in the parish of St. Saviour's, Jersey.

1854. That was after your return to Jersey?—Yes.

1855. Have you been abroad since?—I have been to France with my husband.

1856. Of your own free will?—Yes.

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Mr. Abraham Aubin.

Mr. *Abraham Aubin* examined.

1857. Are you centenier of St. Saviour's?—Yes.

1858. Do you recollect looking for Madame Mourant?—Yes.

1859. When was that? Was it somewhere between Easter and August, 1845?—Somewhere about that. I think it was on a Friday morning that I was called on.

1860. Was it early?—Yes; it was very early.

1861. You did not find her, I believe?—No.

1862. From what quarter did you receive your information?—From Mr. Philippe Mourant, junior.

1863. The last witness was a servant, at that time, of his father, was not she?—Not at that time; she had been away a month or so, I should expect.

1864. Whose servant had she been?—She did not live anywhere then, I believe. Before that, she lived with the father.

1865. By "lived," do you mean in his service?—Yes; in his service.

1866. She had been away from the house of Mr. Mourant?—Yes.

1867. What was the information, which you received from Mr. Mourant, junior?—He complained to me about his father keeping company with this woman.

1868. Was that the whole of the complaint?—Yes; I believe that was all.

1869. You had some persons with you, when you went to look for her, had not you?—Yes. I had one of the Police officers with me, and the son of Mr. Mourant.

1870. Did you go for the purpose of seizing her, or not?—It would have depended upon the circumstances.

1871. Upon what circumstances?—As I was informed they kept bad company together, I thought it my duty to go and search the house.

1872. To search whose house?—This Frenchman's house.

1873. Mr. Mourant's, do you mean?—No; a Frenchman that she was living with.

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1874. Do you mean bad company with the Frenchman, or with the father?—With the father.

1875. You received information from the son that Rosalie Rabecq was keeping bad company with the father; and therefore you thought it your duty, in company with young Mourant, to go and search the house where she then was?—Yes.

1876. Did you give information to the constable?—No.

1877. Neither that you were going to do it, nor that you had done it?—No.

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Mr. Francois Godfray.

Mr. *François Godfray* (Advocate) further examined.

1878. Were you constable of St. Saviour's at the time alluded to?—Yes.

1879. According to the course of practice, should the centenier have reported to you in this case?—By the directions which have been given, whenever a centenier goes to arrest a person, the constable ought to be informed.

1880. Before his going?—Either before or after.

1881. There was no arrest here?—He ought to have informed me before he went. I consider that the constable is the head officer of the Police, and that nothing can be done without him.

1882. That is the effect of the oath taken by him, is not it?—Yes. Nothing can be done without the constable.

1883. By his oath he is obliged to report to you, is not he?—I do not recollect the oath precisely.

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Mr. John Chevalier.

Mr. *John Chevalier* further examined.

1884. You went in search of this woman, did not you?—I did.

1885. Can you give us the date?—I have a copy of the letter from the Lieutenant Governor, that Mr. Le Sueur put into my hands.

1886. (To Mr. *Le Sueur.*) Can you verify that copy?—Yes; this is a copy of the letter.

1887. (To Mr. *Chevalier.*) What is the date of that letter?—11th of June, 1845.

*The letter was read as follows.*

1888. Sir, *Governor's Office, Jersey, 11th June*, 1845.

It appearing, from the papers transmitted to me in your letter of yesterday's date, that Rosalie Rabé * is a woman of bad conduct, and altogether a dangerous character, I request you will take an early opportunity of sending her to her native country.

I have the honour, &c. &c.,

*To* E. Gibbs, *M.G. Lt. Gov.*

*P. Le Sueur, Esq., Constable of St. Héliers.*

En conséquence de cet ordre, Rosalie Rabé fut renvoyée du pays: elle y est revenue furtivement, et y est restée quelques jours: mais elle a réussi à se soustraire aux recherches de la Police.

(Signé) P. Le Sueur, *Connétable de St. Hélier.*

1889. (To Mr. *Chevalier.*) You found her, she says, in her bed?—She was found in a room in Mr. Resnouf's Court.

1890. She was not up at the time, was she?—I do not know.

1891. It was about six in the morning, was not it?—Rather later than that. I think somebody told me that she was not up; and I waited about half an hour or so in the yard, till she dressed, or till she was ready to come.

1892. Was this before you had heard of the Governor's letter?—I think, it was after I had received this letter that I went. Mr. Le Sueur put this letter into my hands; and, I think, it was in consequence of that that I went.

1893. Was that the first time of your looking for her?—I have no recollection of ever having been but once.

1894. Did you tell her that there had been a theft committed in St. Saviour's?—I do not recollect that I did: but I rather think the son told me something had been robbed: but whether I told her that there had been I do not know. I know the son told me something had been robbed at his house, or at his father's. I paid very little attention to what he said.

1895. Did you mention the name of Johnson?—I do not know: I do not suppose that I did.

1896. Do you know the name?—No; I do not know the name.

1897. Did not you desire her to go and see Johnson?—I have no recollection of that at all.

1898. Did you take her to prison?—No.

1899. To the hospital?—Yes.

1900. Are you quite positive that this letter of the Governor had been seen by you before you did this?—I really think it was in virtue of that letter that I went to the house.

1901. Do you feel positive?—I have no recollection of my ever having seen the woman but that instant.

1902. May we take it down that you are certain of that?—I feel confident that that was the case. I have never accompanied her, except the Sunday following; and she herself says that I told her that I had a letter from the Lieutenant Governor.

1903. Are you confident that you never took her but once?—I have no recollection of ever having seen the woman but that single time.

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* The name was mis-spelt.

1904. That is to say, two or three days continuously?—It was the Thursday or Friday that I took her. She told me she came from the coast of France; and she told me that she lived near Regneville. I made inquiries, and was told that a vessel was going to leave the island.

1905. What directions did you give, when you took her to the hospital, to Mr. John Binet?—I told him that it was most likely for a day or two, as she was ordered off from the island.

1906. You do not recollect that you did say so?—No; I cannot recollect now. I told her, I think, that it was for a day or two that I should have to send her out of the island; that I had a letter to do so.

1907. You do not give a direct answer to anything I ask you.—I have not the best of memory, unfortunately for me.

1908. Do you know what sort of place she was put into in the hospital?—No; I do not.

1909. Do you recollect her desiring to be taken to the Court?—No; there was an order from the Lieutenant Governor.

1910. Do you recollect enough to say that she did not express that desire?—There was an order from the Lieutenant Governor. I do not recollect that she ever asked me such a thing.

1911. Is your memory sufficiently positive to enable you to say that she did not?—I am most positive that she did not tell me so. I think I should recollect if she had.

1912. You do recollect telling her that you had the orders of the Lieutenant Governor?—Yes.

1913. You saw her again on Sunday, did you?—Yes.

1914. Did you charge her with any offence at all?—No.

1915. When you saw her on Sunday, you put her into a vessel, I believe?—I put her into a van or a coach that we had there, and drove her to St. Catherine's Bay, where I was informed a vessel was going near her native place, to Port Baile, near Regneville.

1916. How far is Regneville from Granville?—I should suppose about six leagues.

1917. Did you tell her that she was going to Granville?—No.

1918. Where is Port Baile?—It is on the coast of France, close by Regneville.

1919. Can you tell me how far it is from Regneville?—

1920 Mr. *Pelgué.* It is forty miles to the best of my recollection: I have been that way.

1921. (To Mr. *Chevalier.*) Did you mention Botany Bay to her?—No.

1922. Are you quite confident of that?—Quite confident.

1923. Did you tell her that she had better not come back to Jersey?—I may have told her that.

1924. Do you recollect telling her that?—No; I do not recollect saying so.

1925. Did you afterwards look for her, on hearing that she had come back?—I do not recollect that I did: that is the only time that I ever saw the woman, to the best of my recollection.

1926. Were you ever in search of her afterwards?—No.

1927. The first you heard of the application to the Lieutenant Governor was from Mr. Le Sueur putting that letter into your hand?—Yes; he put the letter into my hands; and by virtue of that letter I looked for the woman.

1928. Did you know that an application was intended to be made to the Lieutenant Governor?—No.

1929. (To Mr. *Le Breton.*) Is it usual, when the Governor exercises this power, for him to act through his own officers, or through the officers of Police?—Through the officers of Police. He generally directs, of his own authority, the constable to send away the person, if he is an alien.

1930. (To Mr. *Chevalier.*) Are you quite certain whether you said to her anything at all about a robbery having been committed by Johnson?—I may have told her that; the son told me that there was one.

1931. Did you do so or not?—Since that time I cannot recollect. I know that the son had told me so; it was some days previous to that he told me that this girl was living with his father, and that everything was going from the house; that a great many things were robbed from the house. I may have told her that a great many things had been robbed from the house.

1932. When you went with her, did you charge her with robbery, or did you tell her that you had had the Lieutenant Governor's order to take her out of the kingdom as an alien?—I never charged her with robbery.

1933. Nor with being concerned in a robbery with Johnson?—No.

1934. Then what she says in this paper is false?—I have not the least recollection; and, if I had, I think I should have recollected it.

1935. Do you keep no note at all of any of these circumstances?—No. If I have to present a person before the Court, I make notes to form the Report upon it; but in this case, as I had no Report to make, I did not make any note.

1936. It was prior to her marriage with Mr. Mourant?—Yes; it was before that. That letter remained in my possession for some time; and the son, on Saturday, came and told me that he had heard she was gone to Guernsey, and he wanted the letter back again; and I think I gave it to him.

1937. The Governor's letter?—Yes. The original was taken to Guernsey by the son. He left it in Guernsey; and this is a copy of it.

1938. What you had at the time you sent her out was the original, was it?—Yes.

1939. (To Mrs. *Mourant.*) Was it after or before your marriage that the centenier came to your house?—Before my marriage. Since my marriage, I have not been meddled with at all.

1940. (To Mr. *Le Sueur.*) Mr. Le Cronier is unwell, is he not?—He is.

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Mr. Philippe Mourant, Sen. 14 September, 1846.

Mr. *Philippe Mourant,* Senior, examined.

1941. Are you the husband of Rosalie Rabecq?—Yes.

1942. Do you recollect her arrest by Mr. Le Cronier?—Yes.

1943. Do you recollect Mr. Aubin searching for her afterwards?—Yes; I recollect Mr. Aubin searched the house for her in St. Saviour's.

1944. Do you recollect Mr. Chevalier taking her afterwards?—She was at St. Saviour's, and was sent for, and went to town, and slept in town; and, the next evening, Mr. Chevalier went to her house and conducted her away. The name of the person is Clement Resnouf at whose house she slept in town.

1945. When was it that Mr. Chevalier took her away?—I was not present at the time.

1946. When did you first hear of it?—The same day.

1947. What day was that?—I cannot recollect the day.

1948. Do you recollect the month?—I do not recollect the month or the year.

1949. Have you made any charge to any body of any robbery in your house?—My house was robbed while I was in Guernsey.

1950. Before the time that she was taken up?—After she was arrested.

1951. Had you made any complaint of your being robbed before she was arrested?—She was in Guernsey with me at the time my house was broken open.

1952. Before Rosalie Rabecq was taken away, had you made any complaint of your house being robbed at all?—I had not complained to any body, as I had not perceived that my house had been robbed.

1953. Or that any articles had been taken from it?—I had not perceived that anything had been taken away from my house.

1954. Did your son live with you?—He had left the house in the month of August; after which the house had been robbed.

1955. Was your son living with you at that time?—Yes.

1956. Did your son sleep at the house at the time?—Sometimes; and at other times he resided with his wife.

1957. Where is his wife's house?—In Grouville.

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Mr. Peter Le Sueur.

Mr. *Peter Le Sueur* further examined.

1958. Can you give the Commissioners any information upon this case?—I know, when this woman was first put into the hospital, I heard of it on the Sunday morning. The son, Mr. Phillippe Mourant, complained.

1959. Complained to whom?—I saw him in the course of the Sunday; and he was then complaining that a woman of bad character had induced his father to promise to marry her, and that she had robbed him.

1960. Robbed the father or the son?—I cannot say positively whether the father or the son; but I should rather say the son.

1961. This was after Mr. Chevalier had taken her?—It was the first time she had been placed in the hospital. She could not have been in the hospital twenty four hours, because she was liberated in the morning.

1962. Was this the first apprehension, before the apprehension to which Mr. Chevalier speaks?—Yes.

1963. You can give us the date?—No; it is impossible for me to give you the date.

1964. Was it before the Governor's letter?—Yes.

1965. Who put her in, then?—I think it was Mr. Le Cronier. He complained also that she had threatened the life of his children, that is, Mr. Phillippe Mourant, Junior's, children. At that time, I thought perhaps that the object of the son was to prevent his father, who was an old man, marrying this woman; and I think I gave directions to have her put out of the hospital.

1966. You thought she was not a proper subject for confinement?—I thought the charge was not sufficiently expressed.

1967. The charge of robbery?—Yes: and also about the threats that she had used.

1968. The impression on your mind was that the real object was to prevent an imprudent marriage?—Yes.

1969. Was she released?—Yes: I suppose she must have been released in the course of the morning, the Sunday morning. Sometime after, Mr. Mourant, Junior, again complained about this woman, and wanted her to be sent out of the island. I said that the Police had no such authority; but, though the marriage would be an improper one, however unfortunate it might be for the family, the Lieutenant Governor had alone the power to send her out of the island. He wrote a complaint to the Lieutenant Governor; and, I think, it was supported by two affidavits that she had threatened the life of his own children. Upon that, the letter came; and I handed it over to Mr. Chevalier. I had been before to the Lieutenant Governor, I think a day or two previous: some of the papers had been submitted to him; and I was informed that the letter would be granted. I think Mr. Chevalier had the letter before he acted.

1970. Was it from the Lieutenant Governor you heard the fact that the letter would be given?—From his secretary.

1971. Mr. *Chevalier.* I have referred to the books; and I find that I took the woman into the hospital on the 12th of June, and took her out again on the 15th; that was the day after the order of the Lieutenant Governor.

1972. (To Mr. *Le Sueur.*) The Commissioners understand you have some other evidence to give them?—I would wish to make a few remarks on the evidence, or the charges which have

been brought forward against the Police of St. Hélier's, and especially to the complaints that they have acted, or been biassed, in some instances, by political motives, and, in others, by personal spite. With regard to Mr. Charles Romeril, this man was formerly the keeper of the powder magazine, where the merchants' powder was deposited, at the Rocher Fendu, on the South Hill. A fire broke out on Sunday morning in Sand Street. It was got under with great difficulty. There was a large concourse of people; and, at one time, I discovered that several barrels of powder had been deposited in a small store adjoining the house on fire. At great risk this powder was withdrawn. It it had exploded, it might have destroyed a great part of the town. I found that Mr. Charles Romeril had deposited the powder in that store. I was obliged to insist upon having the key of the powder magazine; and he was displaced shortly after by the Parish Assembly. Since that, he has frequently insulted the Police.

1973. You trace his hostility to the Police to your official interference?—Yes; ever since that, Mr. Romeril has had a spite against the Police; and, in the paper which he edits, he has often insulted the Police.

1974. You consider him as an antagonist altogether, do you?—The efficiency of the Police is more as a moral force than a physical one.

1975. In its present state?—Yes; and the insults which have been heaped upon the Police by newspapers have materially diminished the efficiency of the Police.

1976. You think they have diminished its efficiency by creating an unpleasant feeling on the part of many people against it?—Yes.

1977. Do you consider this hostility of some of the newspapers against the Police as arising from political feeling?—Partly from political feeling, and partly also from personal spite. Very often, in this island, if a public functionary does his duty, and in doing so displeases any one, immediately those persons become political opponents, and at the same time do all in their power to attack such a functionary.

1978. You say it creates a political feeling?—Yes.

1979. In what way does the resentment against the conduct of a Police functionary become political?—Very likely the Police would be immediately attacked, as never acting but under political influence, or as being biassed by political influence.

1980. What the Commissioners want to trace is the connection between a dislike to a particular Police officer, or to the Police in general, and political feeling. Is there a Police and an Anti-police party?—There is not exactly a Police and an Anti-police party; but, as every citizen takes more or less part in the political affairs of the island, and personal quarrels generally turn or influence the conduct of those who are parties to them, very often those people change sides merely on account of personal quarrels.

1981. What I want to understand is. why a person, who has an affray with a Police officer, can be sure that, in turning it into a political quarrel, he is not injuring his own party as well as the opposite party.—It is generally the case.

1982. You think parties cannot be divided into a Police and an Anti-police party?—I can mention a case to the point. I voted against a Director to the Hospital, Mr. Sullivan. Immediately after, the Messrs. Sullivan, his sons, and himself, who had voted for me in the previous elections, turned round and became very active Laurel men; and during the last two years, those persons having got the "Constitutionel," reckoned to be the principal organ of the Laurel party, I have been ever since grossly insulted in that newspaper. On that occasion, I acted of course in my legislative capacity, as a member of the States.

1983. You state the efficiency of the Police to be as much moral as physical?—Yes.

1984. You think that their moral efficiency is injured by the fact that a functionary, who has done his duty, is disliked, and that dislike becomes political?—Yes, very often.

1985. And that turns them into Laurel or Rose men, as the case may be?—Yes.

1986. And you trace it up to the fact of the Police being recognized, rightly or wrongly, as being of one party or the other?—The members of the Police take part with one party or the other.

1987. Together, generally, I presume?—Generally together.

1988. And the whole system, you think, injures the moral efficiency of the Police?—Of course, if the Police is insulted every Saturday by the papers.

1989. I understand you to attribute the impediment offered to the efficiency of the Police to the fact, that the dislike to them is apt to degenerate into a party feeling?—In many cases it is so.

1990. I understand you to say that an officer of the Police, who does his duty irrespectively of party, is liable to have those who have supported him turn against him; or liable to attacks in the newspapers from the other party?—Yes.

1991. Does not that in fact tend to prevent members of the Police acting as perfectly free agents in the discharge of their duty?—Within my knowledge, whenever they are called upon to act in their public capacity, I have not known that they have allowed themselves to be swayed by party motives.

1992. Would not attacks of this kind intimidate a timid man?—As to intimidating, the attacks generally appear in the newspapers.

1993. A person does not generally like to have himself abused in a newspaper?—The Police officers, in consequence of insults, to which the Police have been subjected for some time, would not very likely wish to act alone, as they did formerly; they would be afraid of being ill treated.

1994. So that in fact the office of the constable or centenier, if the person does his duty, is a very disagreeable one at present?—It is.

1995. Is it liable, among other charges from persons who have taken offence at them, to be charged with political bias?—Yes.

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Mr. Peter Le Sueur.
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1996. You say that the Police to a great extent act in parties together; I presume that the side which may be prevalent at one time is not always prevalent?—Not always,

1997. Has the same party feeling existed in the case of the prevalence of one party as in the case of the prevalence of the other party? Is the party feeling as strong in the case of a prevalent Laurel party as in the case of a prevalent Rose party?—Very probably.

1998. Have the parties been differently balanced within your memory in the town of St. Hélier's?—I suppose that the majority in the Parish Assembly has generally been on the same side in the town for the last thirty years.

1999. Have you turned your attention at all, generally, to the question whether any modification of the present system could relieve the Police from the risk of having their conduct attributed to political party feeling?—It is very likely that, if the law on the rating of property were altered, and a better system of rating introduced, the members of the Police, who are members of the Parish Assemblies, would not be so often attacked upon political grounds.

2000. I understand you to speak confidently to this fact, that the Police in the town of St. Hélier's are not influenced in their conduct as police officers by party feeling.—I do not think they are.

2001. You do not think that they use their power, as mere functionaries of the Police, to promote party objects?—I know of no case in which they have done so, when they were called upon to act in their public capacity.

2002. You mean in their public capacity as policemen?—Yes.

2003. Then, if the parties in the Parochial Assemblies now connected with the Police were not the persons who actually acted as Police, they would in fact lose no power in the Assembly?—With regard to police officers, I do not think they would, supposing they were to be still in the Parish Assembly.

2004. I understand you to say that their power as policemen is never used for party purposes?—I do not think it is. The centeniers and constables, from the place which they hold, may have a certain influence in the elections; but, with regard to the police officers, if they have an influence in the elections out of the Parish Assembly, it is not through the office which they occupy.

2005. We want to learn your opinion upon this; whether their political power, as apart from their Police power, would be weakened by the loss of the Police part of their functions?—Some of the police officers have no right to vote in the Parish Assembly, except as members of the Police.

2006. You take a distinction between the centenier and constable, and the vingtenier and the officiers de connétable. The vingteniers and the officiers de connétable, you say, would lose their influence, if they were disconnected from the Police?—Yes, because they would have no vote in the Parish Assembly.

2007. But, so far as the political functions of the Police generally are important, they are quite independent of any connection which exists with, or the disconnection which might be made from, the duty of preserving the peace?—Except in the Parish Assemblies, I do not consider that the police officers' office is so important as to give them any influence out of the Parish Assembly. If they refuse to do their duty, the constable, or centenier, or the Crown Officers, may be appealed to.

2008. At present, the Commissioners are trying to ascertain whether the value of this system of election would be impaired by detaching the duty of preserving the peace, which seems to be a laborious one, from those functionaries, keeping up the functionaries, but putting the power of preserving the peace in other hands?—With respect to the persons with whom the Police are brought in contact in their public capacity, it is very seldom that those persons take any part whatever in the elections.

2009. Supposing, for the sake of argument, you were to choose a dozen persons who had never mixed with party politics at all, and put them to preserve the peace, not connecting them with the Parish Assembly; would the political efficiency of the persons now constituting the Police be in any way injured by their losing the duty, or being relieved from the duty, of keeping the peace?—I do not suppose it would. If other persons are to preserve the peace, the office ceases to exist.

2010. Do you think any good is done by attaching to those persons, who are, to a certain extent, the representatives of the people in the Parish Assembly, the duty of preserving the peace?—There is a great pecuniary advantage to the island, that the Police is not a paid Police. The only members of the Police who receive any fees are the vingteniers. They receive the poor-rates in their different parishes, but have only a commission of ten per cent. on fines, incurred generally by persons who do not do the statute labour on the roads. In St. Hélier's the fees or commission of the vingteniers in 1844 amounted altogether to 777 livres, or about 35*l*.

2011. Among how many?—Among six vingteniers.

2012. That is between five and six pounds a-piece?—There is one who receives much more than the others; one receives only five pounds.

2013. The officiers de connétable get nothing?—No; the vingteniers are the only paid members of the Police. In the whole of the country parishes, I do not suppose the commission of the vingteniers amounts to half the sum that I have named.

2014. Do you happen to know, of your own knowledge, what is the ordinary subscription, when gentlemen subscribe to keep a private watch?

2015. Mr. *Evans.* It is generally three shillings a quarter, or twelve shillings a year.

2016. Mr. *Le Sueur.* It follows, from what I have said, that the Police of the whole island does not cost more than fifty pounds a year. At the same time, the vingteniers also collect

the poor or parochial rates, which, in the town of St. Hélier's, may average about three thousand pounds a year.

2017. Have the vingteniers any commission upon the parochial rates?—They have no commission whatever.

2018. That is collected at no expense?—At no expense whatever. The taxes in this island are so light that the island is generally looked upon as being free from taxes; and on that account, I believe, a great many English gentlemen are induced to flock to this Island. If we were to have a paid Police, the parish rates of St. Hélier's would have to be increased by one half at least, as I have ascertained that in Southampton, the population of which is about the same as that of St. Hélier's, the expenses of the Watch Committee exceed yearly 1700*l*. If the paid Police system were also introduced into the country parishes, of course the country rates would have to be considerably increased; and, I suppose, in some parishes, doubled. Our municipal system has been very much attacked; but I really think that the country owes a great part of its prosperity to that very system by which, for an Island containing about 50,000 inhabitants, the public peace is preserved, and the poor are relieved, at an expense, as far as regards the emoluments of the municipal authorities and the Police, of 50*l*. a year for the whole Island. The taxes that are levied in this island, whether they are local parish taxes or duties imposed by the States, are entirely applied to the relief of the poor or to public improvements. A very small portion, or a very trifling portion only, goes to public functionaries for their salaries; so that, with limited revenues, the Island has been enabled to execute all public works. The roads that have been made within the last thirty years are numerous. They have been very expensive in constructing. They are, I suppose, generally kept in good order; and we have never seen a toll-gate on any part of the Island.

2019. Some statute labour is applied to the maintaining of the roads?—There is some statute labour of course. If our municipal system is altered, and all our functionaries have to be paid, the money which is now employed in public improvements will be absorbed, or greatly so, by their salaries, or the taxes will have to be increased, and the lightness of taxation, which is the principal cause of the prosperity of this Island, will be destroyed.

2020. By destruction of the lightness of taxation, you mean it will not be so light as it is now?—The lightness of taxation now is especially the cause of the prosperity of the Island.

2021. The cause of the prosperity will be destroyed, you think, if the taxation is rendered less light?—The prosperity of the Island will be impaired if the taxation is rendered less light.

2022. When you speak of the prosperity of the Island being destroyed by removing the lightness of taxation, you speak merely of pecuniary prosperity?—By prosperity, of course, is generally meant the material prosperity of the island.

2023. Supposing it could be established that the security of property were made greater by incurring a somewhat greater expense, and the comfort of the inhabitants, and especially of the gentlemen who are called gratuitously to perform a very laborious duty, were increased, is not that prosperity of another sort?—As to the security of property, I think it is perfectly secure in the Island. The robberies committed are not numerous; and they are generally of articles of very small value. With regard to the security of property, I think that the Police, as now constituted, is quite sufficient, although improvements might be made in our laws, which would increase its efficiency without destroying the system. With regard to the preservation of order, at night, in the town of St. Hélier's, a night watch of course would be useful; but I do not think that it is required, as far as the security of property alone is concerned.

2024. It would be rather with a view to the comfort of the inhabitants?—Yes; it would be rather with a view to the comfort and quietness of the inhabitants than to the security of their property. It is very possible that, if we had had a Police Magistrate for the last twelve years, before whom persons disturbing the public peace at night might have been immediately brought by the Police, and also if we had had a more stringent law on tavern keepers, a night watch even would not have been required for the quietness of the inhabitants at night.

2025. The Police, the Commissioners understand, do not patrol at night?—They are to visit the public houses: at least they will do so; but, for some time, the law has been so very insufficient and so very uncertain in its provisions, not requiring a tavern keeper to close his house at stated hours during the night; and then, of course, the public peace is much more often interrupted than it would have been if we had had a good law on tavern keepers and also a Police Magistrate who would have had cognizance of minor offences.

2026. With respect to your remarks on the Police, Mr. Chevalier stated that he had a great deal to do; that he was up sometimes seven times in the night, and very often four or five times. Do not you, being a gentleman in very large practice here, find it a very severe call upon your time in the day time?—With me certainly it is.

2027. From Mr. Chevalier's evidence, it would appear that the difficulty in the way of relieving the Police officers of their political functions would be but small. He expresses himself perfectly willing to perform the onerous duties which are now devolved upon him?—The difficulty would be to find the money.

2028. Mr. Chevalier, who is spoken of as a very active officer, expresses his willingness to act gratuitously. How would that be diminished by disconnecting the Police officers from all political functions? Why would Mr. Chevalier be less willing to be the active policeman that he is, if the constable or centenier had no political offices to perform?—I have said that the office of constable gave a certain political influence even out of the parish assemblies.

2029. You think, if that disappeared, it would diminish the readiness to serve on the Police? Is the only remuneration looked to, in serving on the Police, the political influence the individual gets by it?—It is a consideration; but the office of centenier is looked upon as an honourable office.

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2030. Which you think it would not be, at least not so honourable, if it were disjoined from its political functions?—Of course it would not.

2031. The Commissioners presume that it is a great advantage to have a gentleman having your knowledge of the law at the head of the Police?—I presume my services must have been agreeable, both to the Police and to the inhabitants, having been nearly unanimously elected on several occasions.

2032. In any parish the having at the head of the office a gentleman who is familiar with the law is found to be an advantage?—I suppose so.

2033. If a gentleman were there who was peculiarly familiar with the Police law, that, as far as that particular consideration goes, would not be a less advantage?—I presume not.

2034. I think I understood you to say that the office of constable and the office of centenier, which are the head offices in the Police, though not remunerated in money, are in point of fact remunerated by political influence and consideration, and so become an object of ambition and distinction?—Yes.

2035. The constable is a member of the States ex officio, is not he?—He is.

2036. Does the office of centenier also lead, in ordinary course, to becoming constable?—In many cases, especially in the country parishes.

2037. So that it becomes an object of ambition on that account?—Yes.

2038. Besides the constable being a member of the States, and besides the chance which the centenier has of becoming a constable, and so a member of the States, is there any other political influence which he has?—The influence of his station, of course: the position of centenier is looked upon as honourable.

2039. I gathered, from an earlier answer of your's, that the constable and centenier have a direct political influence in the Parish Assemblies as at present constituted?—Yes; but there are many functionaries here who are paid, and who also exert great influence in the Parish Assemblies. The Crown officers are public functionaries who are paid.

2040. They are ex officio members of the Parish Assemblies?—Yes.

2041. Does not the influence of the constable and centeniers in the Parish Assemblies arise from the inferior Police always voting with them on parochial questions?—In some parishes it may; but in several others the members of the Police do not always vote on the same side, or with the same party.

2042. Are not the centeniers and officiers de connétable elected by the Parish Assemblies?—Yes; and on that account, of course, they generally belong to the party which is predominant in the local Assembly.

2043. Does not the party which is predominant in the local Assembly also make the rate?—It does: and the law is such as of course to allow a great deal of arbitrary discretion.

2044. Do not the majority of the Parochial Assembly also rectify the rate?—Yes; but there is an appeal from the decision of the Parish Assembly to the Court; and, when a party who complains that he is too much rated, or that he has not been admitted to the rate, has appeared before the Parish Assembly, the expenses of the appeal to the Court fall on the parish.

2045. In the event of his complaining that he is too highly rated, is not he obliged to swear to the amount of his property, and, upon his so swearing, is not he rated to half that amount?—Yes, if he complains in Court.

2046. Am I correct in stating that the ordinary mode of rating pursued throughout the parishes in Jersey is not to rate a person at half the whole amount of his property?—It is not. The Parish Assemblies have no means whatever to ascertain what may be the property of the individual; therefore persons are generally rated according to their apparent means. The real property belonging to rate-payers can of course be ascertained, but only after a laborious search in the public Register Office of Contracts.

2047. That would be an imperfect means, probably?—It is impossible to ascertain what is his personal property, or what are the debts owing from him, unless they are registered.

2048. Does not the fact, that the person, who complains of being over rated, is obliged to come before the Cour Royale, and swear to the amount of his property, and then be rated to half that amount, materially interfere with the efficacy of that appeal?—It must interfere with it; but in many cases those persons who have appealed have had no property whatever.

2049. In the event of a person being improperly put on the rate, is there any mode of appeal by a third party against it?—There is a late case, where one of the members of the Parish Assembly had the names of a number of persons struck out alleging that they had been rated though not resident in the parish. One of the members of the Parish Assembly complained to the Court, and the Court ordered their names to be erased on the complaint of one of the members of the Parish Assembly.

2050. That is an instance of a third party complaining against others being inserted in the rate list?—Yes; but since the last law I do not know any case where third parties have been allowed to complain to the Court.

2051. The date of the last law is 1833, is it not?—Yes.

2052. I have looked over the Act of 1833; and I do not see any provisions in the Act which would give a remedy against a person improperly inserted.—I do not think there is.

2053. Or improperly omitted?—No.

2054. Of course any question of this sort would come before the Cour Royale?—Yes.

2055. Would it be heard before the smaller number, or by the full Court?—It would be tried first by the inferior number, with an appeal to the full Court.

2056. Are not the Jurats of that Court elected by the people who are on the rate which has been made by those very Parochial Assemblies?—They are; but, of course, not by the very same persons who make the complaint before them.

2057. They are elected in the same manner?—Yes.

2058. Am I right in supposing that at the present moment the party which is predominant in the States is the Rose party?—The majority, I suppose, is doubtful. I do not suppose any question has come before the States lately, from which one could exactly know how that was.

2059. In the Parochial Assemblies, am I right in supposing that the Rose party is predominant?—In town the Rose party is predominant. I cannot speak positively as to the other parishes; but I believe that it is not predominant in St. Ouen's, Grouville, St. Clement's and Trinity.

2060. Do you agree that there is one parish in which it is not much of a party question?—In St. Brélade's, I suppose, there is not so much political feeling as in any one of the others.

2061. Without taking the whole of the States, are you sufficiently acquainted with the politics of the Jurats, acting in the States, to know what party has the majority among them?—The liberal or Rose party.

2062. How would it be with the constables?—The Rose party also has a majority among the constables.

2063. It is your opinion, is not it, that the important political influence of the constables and the centeniers is in the Parochial Assemblies?—Yes; and also at the public elections.

2064. Which depend, do not they, a good deal upon the constitution of the Parochial Assembly?—They do; but still, in many cases, the constable has been elected against the majority of the Parochial Assembly. It has been the case.

2065. Is not it ordinarily the case that the majority of the parish goes with the majority of the Parochial Assembly?—There are parishes in which it has not been the case.

2066. In which the majority of rate-payers do not go with the majority of the Parish Assembly?—No.

2067. But ordinarily it is so?—It is in many cases.

2068. More frequently than not?—Yes; more frequently than not.

2069. Would not the very functions of the Parochial Assembly tend to produce that effect?—Yes, since they make out the rate list.

2070. I observe you gave this answer to the Commissioners. You say it is likely, if the law on the rating of property were altered, and a better system introduced, the members of the Police who are members of the Parish Assembly would not be so often attacked on political grounds. Am I right in supposing that it is their interference in the Parish Assembly which gives a political character to the Police? The having the discretion thrown upon them?—That is one of the reasons.

2071. Are you sufficiently old to remember the last Act which was made for the rating of Parochial Assemblies? That was in the year 1833. Were you in the habit, at that time, of taking part in public affairs?—I was quite conversant with what was going on in the Island.

2072. Are you able to say what party in the States at that time had the majority?—That was passed by the Laurel party.

2073. The preamble of that Act is:—

"Les Etats, convaincus que les décisions, en sens divers, rendues par les différents Magistrats qui ont été appelés à prononcer sur les qualités requises pour avoir droit de voix dans les Elections de Juré Justicier, de connétable et de centenier, ne peuvent résulter que de l'insuffisance et de l'obscurité de la loi contenue dans le code de 1771; et considérant que souvent ceux qui formaient la majorité dans les Assemblées de Paroisse, abusant du pouvoir que la loi leur a confié, ont, à la veille d'une Election, dans la vue de favoriser leur candidat, obtenu une rectification du Rât Paroissial, et y ont fait inscrire des personnes qui ne possédaient aucune propriété, et en ont fait retrancher qui avaient les moyens de contribuer aux taxes publiques, et que ces abus de pouvoir ont donné naissance à une foule de procès, et servent d'autant plus à alimenter l'esprit de parti et à soulever des passions haineuses qu'ils restent le plus souvent impunis par le défaut de la Législation actuelle; que la plupart des Assemblées de Paroisse ne répartissent point les taxes publiques en proportion de la fortune des contribuables, et ne suivent, pour ainsi dire, d'autre régle que leurs caprices."

Those appear to have been the mischiefs which this Act was intended to remedy. Is it your opinion that those mischiefs still exist, notwithstanding the Act?—Parish Assemblies have no means to ascertain what may be the property of individuals, so that they are obliged to rate them according to their apparent means.

2074. Has the operation of this Act had the effect of curing the imperfections and mischiefs which are mentioned in the preamble?—Some of the evils have been remedied.

2075. Which do you think have been remedied?—The Parish Assemblies cannot, as they did formerly, make a new rate immediately before an election takes place.

2076. Is it the case now that the rate lasts the whole year?—Yes; it is made in January, and lasts the whole year. With regard to the allegation, "et y on fait inscrire des personnes qui ne possédaient aucune propriété," very likely that abuse has not been diminished at all.

2077. The Act has not been able to control the abuse?—No. The next is; "et en on fait retrancher qui avaient les moyens de contribuer aux taxes publiques," By the 5th Article, those persons are allowed to appeal to the Court.

2078. A remedy is provided for that: but I gather from you that that remedy is very inefficient.—Very inefficient; and, with regard to party spirit, I do not suppose it is diminished in any way since 1833.

2079. Then that Act has not entirely produced its effect?—No.

2080. You say, if the law as to the rating of property were altered and a better system introduced, that would be an improvement. Have you any better system to suggest?—Not at present. A system is now under the consideration of a Committee of the States.

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2081. Has it been so long, or only very lately?—Lately.

2082. Could you tell me the names of the gentlemen who act upon that Committee?—There are Messrs. Bisson, Picot, and Le Gallais, the Rector of St. Hélier's, I think (I am not positive as to the clergy who belong to the Committee), and the constables of St. Saviour's, St. Brélade's, and St. Hélier's.

2083. Perhaps it is a question which, being purely a political question, the clergy would not be likely materially to interfere in. Am I right in supposing that those gentlemen usually avoid political contests of any sort?—There is hardly a person in the Island who is free from party: very few.

2084. I gather from your answer that any change to be introduced, which is to prevent the Police from being attacked on political grounds, must be a change which must prevent the inferior Police being members of the Parish Assembly?—I do not see that that follows.

2085. Your former answer did not intend to exclude the vingtenier and the officiers de connétable from being members of the Parochial Bodies?—No: but, if persons are to be rated at all, better means must be devised to ascertain what is the amount of their property.

2086. Would not the same political objection exist with regard to the Police if they continued members of the Parochial Assemblies, as policemen, without the necessity of being rated at all? I understand that the centenier and the officiers de connétable are members of the Parochial Assembly without the necessity of being rated to the same amount that the Principaux are. If any change of rating were to take place, continuing those gentlemen who are members of the Police as members of the Parochial Assembly because they were officers of the Police, would not the political feeling against them, whether right or wrong, still continue?—I think that party spirit would be very much reduced over all the Island by merely altering the rating.

2087. Without excluding the vingtenier and the officiers de connétable from the Parish Assembly?—Yes.

2088. Could you exclude the vingteniers and officiers de connétable from being members of the Parish Assemblies without destroying or materially impairing the political power of the constable?—No; it would impair it to a certain degree.

2089. If the political power of the constable were taken away, would the office be any longer an object of ambition?—Of course not, if the constable were not a member of the States.

2090. He might still be a member of the States; but, if you take away his political power in the Parochial Assembly by means of excluding the vingteniers and the officiers de connétable from the Parish Assembly, would not his office then be one that would make it less an object of ambition?—It would be less an object of ambition; but at the same time I must say that, supposing the vingteniers and officiers de connétable were excluded from the Parish Assemblies, the law of taxing being the same, abuses would still exist, as I do not suppose that the Principaux would act with more impartiality. The richer men would perhaps have their influence increased, to the detriment of the other classes.

2091. Would not the abuse then be in hands which had nothing to do with the functions of the Police?—They would have nothing to do with the functions of the Police, but the same abuses would exist.

2092. Instead of existing in the hands of members of the Police, they would exist in the hands of other people?—The Commissioners appear to fancy that the Police of St. Hélier's constitute the majority of the Parish Assembly, which they do not. It is only one third part of the Parish Assembly.

2093. You say abuses would still exist, whatever alterations were made as to the vingteniers and officiers de connétable, unless you remedied the present system of taxation. Would not one abuse cease to exist, namely, the imputation of political feelings to the vingtenier or officier de connétable?—At the same time the office would cease; for I suppose, if they were not members of the Parish Assembly, there would be no honour or importance attached to the office, and they would not take such onerous duties upon themselves.

2094. Then the mere love of country, which Mr. Chevalier spoke of, would not be quite sufficient in other cases than his?—In this question, I think the love of country has also great influence; but, if persons are prevented from taking any part in the affairs of their country, they are very much more indifferent as to its prosperity.

2095. The public feeling which finds vent in the character of a legislator would not be diminished by the legislator being disconnected from the Police, would it?—Not with regard to the legislator, perhaps.

2096. Are there any other points into which you wish to enter?—I would merely add, at present, that, if unpaid functionaries were prevented from exercising a certain influence in the affairs of the country, that share would of course pass over to the paid functionaries.

2027. Why so?—If the paid functionaries were allowed to take an active part in the elections, and in the general affairs of the island, as they now do.

2098. By paid functionaries, do you speak of the paid functionaries which would remain, or which would be substituted?—Which would remain and which would be substituted, both.

2099. What number of public functionaries are there who, by virtue of their office, are members of the Parish Assembly?—The Bailiff, the Attorney General, the Solicitor General, the Vicomte, and the Greffier. With regard to the paid functionaries, I would merely observe that, a short time before the last rectification of the rate of St. Hélier's, the Attorney General presided at a meeting, or at least so it appeared in the public papers (and I suppose the fact is correct), to upset, if possible, the actual majority in the Parish Assembly. Of course, the ostensible object was to insure an equitable division of the whole assessment of the rate; but

I am confident that, if Mr. Le Breton's party had then had a majority, they would not have acted with more fairness towards the rate-payers.

2100. What is the inference you draw as to the working of the system from that circumstance?—That, if unpaid functionaries were prevented from taking any part in the public affairs of the island, the same rule ought to be extended with much more reason to the paid functionaries.

2101. What I want to understand is this. Those vingteniers and officiers du connétable are members of the Parish Assembly, being placed in that office by election. If it is important that there should be unpaid persons so placed in office by election, is there any difficulty in the electors placing unpaid persons in the parochial office, without those persons being necessarily under the burthen, or having the power, of assisting in preserving the peace? Might not the principle be as well kept up without connecting the persons with those duties which are so onerous?—They are onerous; but they are a great saving to the country.

2102. In what way is what you are now contending for connected with the loading or honouring, as the case may be, those gentlemen with the duty of keeping the peace?—They are elected to keep the peace; and, of course, if their powers are withdrawn, there would be but little honour connected with it.

2103. Have you any further evidence to give to the Commissioners?—I have some details to give to the Commissioners, in reply to the very heavy charges which were brought against the Police of St. Hélier's, especially with regard to the rating.

2104. Will you show the Commissioners the form of the rate?—This is the rate-book of St. Hélier's, (*producing the same*). It consists of the number of rate-payers arranged according to their vingtaines. It is called "rât paroissial de St. Hélier." The rate payers are taxed according to the number of quarters; it contains, at the end, a recapitulation; and the rate runs in this way:—

Le rât inscrit sur les pages précédentes, pour servir aux taxes publiques, au maintien des pauvres, et autres dépenses paroissiales, a été rectifié les 28, 29 et 30 Janvier, 1846. L'Assemblée a, le 24 Février suivant, entendu les réclamations de ceux qui se croyaient surchargés, et a ajouté sur la liste du rât ceux dont les réclamations étaient fondées, conformément à la loi; et, le 8 Avril 1846, le dit rât a été approuvé et ratifié a l'unanimité, se montant à vingt-deux-mille cinq-cent cinquante-sept quartiers. L'Assemblée a, le 1 Mai 1846, taxé le dit rât à la somme de trois chelins Anglais par quartier, et a chargé le connétable de faire lever le dit rât sans délai, et d'adopter à cet effet toutes les mesures nécessaires: la dite somme comprenant le rât des chemins de douze sous.

P. Le Sueur, Constable.

Mr. Philippe Godfray said that the Police of St. Hélier's have the elections in their own hands. I have here an abstract of what was done at the Parish Assemblies last January. In the first place, with respect to those who did not vote in the last election for Jurat, there were 34 who did not vote.

2105. When was the last election?—That was the election in 1845, for Jurat. Mr. Marett and Mr. Arthur were the candidates.

2106. You are speaking of the rate-payers who did not vote at that election?—Yes. This is merely the number of those who did not vote. Of the neutrals, there were 34 persons reduced from 604 quarters to 354 quarters.

2107. They were parties who did not take any part in the election?—Yes. There were 9 raised from 76 quarters to 150 quarters; there were 33 persons who had voted for Mr. Arthur who were reduced from 365 quarters to 245 quarters. So that, if any favour was shown to any of the Rose party, it was only by a reduction of 100 quarters on the whole rate.

2108. There were 33 persons paying collectively 365 quarters?—Yes. The total sum was reduced from 365 to 245 quarters; 72 were raised from 572 quarters to 1396 quarters.

2109. Those 105 were all voters for the Rose party?—Yes. With respect to the Laurelites, there were 11 persons whose rate was reduced from 408 to 308 quarters, and 23 persons whose rate was raised from 299 to 539 quarters. With respect to the Rose party, the number of quarters added to their previous rate was 824, and the quarters reduced 120, leaving an increase of 704 quarters on their rate. With respect to the Laurel party, the quarters added to the previous rate were 240 quarters, reduced 100; their rate, therefore, being increased altogether by 140 quarters. With respect to the quarters added to the Rose men on the previous rate, they were 704, and of the Laurelites, 140, making a difference of 564 quarters.

2110. Upon those figures, I understand that the 72 Rose men were raised in their rates from 572 quarters to 1396 quarters?—Yes.

2111. Would not that have the effect of increasing the number of Principaux very much in the Rose party?—It had that very effect: but the increase did not take place entirely on the persons; at least it did not take place entirely with regard to the right of voting as Principaux.

2112. Have you any calculation to show how many Principaux are added to the Rose party. It would be about 11 quarters and a fraction per head, if distributed equally among the whole of them, would not it?—I will have that statement made out. With respect to the Police, persons who were members of the Parish Assembly, their rate altogether was increased about 26 per cent. There is a list of the different members of the Police, and the extent to which their rates were altered.

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2113. *The same was read as follows.*

| Number. | Police, January, 1846. | Rated before the Rectification. | Rated after the Rectification. | Observations. |
|---|---|---|---|---|
| | | Qrs. | Qrs. | |
| 1 | M.M. Peter Le Sueur, Constable . . | 20 | 20 | |
| 2 | John Chevalier, Centenier . . | 50 | 50 | |
| 3 | George Le Cronier ,, . . | 50 | 50 | |
| 4 | Richard Du Parcq ,, . . | 25 | 25 | |
| 5 | Thomas Sorel ,, . . | 6 | 25 | Including the Rate of his Father who had died shortly before. |
| 6 | Philip Fauvel, Vingtenier . . | 4 | 6 | |
| 7 | John Binet ,, ,, . . | 2 | 6 | |
| 8 | Henry Mahy ,, . . | 4 | 6 | |
| 9 | Ph. Le Sueur ,, . . | 10 | 10 | |
| 10 | Ph. Le Brocq ,, . . | 2 | 2 | |
| 11 | J. Richardson ,, . . | 1 | 2 | |
| 12 | J. Renaut ,, ,, . . | 4 | 6 | |
| 13 | E. Romeril, Police Officer . . | 20 | 12 | |
| 14 | J. Brayn ,, . . | 25 | 32 | |
| 15 | D. Trachy ,, . . | 4 | 6 | |
| 16 | F. De Ste. Croix ,, . . | 10 | 10 | |
| 17 | J. Le Cronier ,, . . | 8 | 8 | |
| 18 | J. Alexandre ,, . . | 12 | 20 | |
| 19 | T. Bichard ,, . . | 4 | 6 | |
| 20 | Ch. Le Gallais ,, . . | 6 | 6 | |
| 21 | F. A. Romeril ,, . . | 2 | 6 | |
| 22 | Ph. Sorel ,, . . | 2 | 6 | |
| 23 | J. De La Haye ,, . . | 6 | 3 | |
| 24 | Geo. Marett ,, . . | 10 | 20 | |
| 25 | E. Gallichan ,, . . | 12 | 6 | |
| 26 | Geo. Priet ,, . . | 2 | 6 | |
| 27 | John Le Cras ,, . . | 6 | 6 | |
| 28 | Ph. Perchard ,, . . | 10 | 20 | |
| 29 | J. Le B. Chevalier . . | 2 | 6 | |
| 30 | John Du Parcq ,, . . | 2 | 6 | |
| 31 | Geo. Falle ,, . . | 2 | 6 | |
| 32 | Geo. Coutanche ,, . . | 12 | 12 | |
| 33 | John Dumaresq ,, . . | 10 | 10 | |
| 34 | Thos. Monamy ,, . . | 6 | 6 | |
| 35 | G. C. Le Feuvre ,, . . | 6 | 20 | |
| 36 | U. L. Manuel ,, . . | 2 | 6 | |
| | Total . . . | 359 | 453 | About 26 per cent. |

2114. Mr. *Le Sueur.* The effect is that, upon the rate paid by the Police, there was an increase from 359 quarters to 453 quarters.

2115. Did any of those gentlemen become Principaux by the change?—There were four men, that were raised from 10 to 20, who have ceased to belong to the Police.

2116. That was their year of going out of office?—They might have been re-elected.

2117. When was the period of Mr. Le Feuvre's service up?—I do not recollect as to Mr. Le Feuvre. Mr. Marett has been since re-elected.

2118. Then there were four going out; but two of them have been re-elected?—Mr. Le Feuvre was not going out. With regard to the number of Principaux on the rate list for 1846, the number of rate-payers is 1922, paying 22,557 quarters. Their average rate is therefore 11 quarters and a fraction. There are 376 Principaux, paying a rate of 15,153 quarters.

2119. Those are part of the 1922, are they?—Yes. The number of Principaux is 376, and the number of the Police who are not Principaux is 28.

2120. What is the average rate of the Principaux?—About 40 quarters, I suppose. The members of the Police, therefore, who vote in the Parish Assembly in virtue of their office only constitute about 1-13th to 1-14th part.

2121. How many are or have been policemen in the whole Parochial Assembly?—There are a great number of gentlemen who have been connected with the Police, whom I do not know. There is no list kept. There are three or four gentlemen who, having filled the office of centenier, have now the right to vote in the Parish Assemblies, though they are not Principaux. I have here another statement of the total number of persons rated. It is 1922; and their rate amounts to 22,557 quarters. Deduct the Principaux, 376, whose rates is 15,153 quarters, and there remain 1546 persons paying 7404 quarters. From those, deducting the 28 members of the Police who are not Principaux, paying 163 quarters rate, there will remain 1518 persons, neither Principaux nor police officers, who pay 7241 quarters. The average rate of those persons is $4\frac{3}{4}$ quarters; while 28 members of the Police who are not Principaux, being rated at 163 quarters, pay an average of $5\frac{3}{4}$ quarters. That is to show that the members of the Police who are not Principaux pay more than the average number of the quarters paid by others.

2122. Have you taken the trouble to look among those 1518 who pay an average of $4\frac{3}{4}$ quarters, to see how many of those are a very little way above two?—No; it can be found by reference to the book.

2123. It appears that the details of the parish of St. Hélier's show that all those people who are not rated as Principaux are rated very low indeed.—There is a large interval between them.

2124. One would expect to find the average rising regularly up to 20.—I suppose there are not any persons rated between 15 and 20 quarters, or very few. I think in the parish of St. Saviour's almost all the Principaux are rated at 15 quarters.

2125. It would take a very small number of people rated at 15 quarters to make all the rest of the voters just have the legal rate of 2 quarters?—It would; the richer class is not the more numerous.

2126. There appears to be no class except the very rich, and the very poor?—There are a certain number at 15, and some at 10, and at 12: but I do not suppose that there are any between 15 and 20, because persons paying above 15 would prefer to be Principaux. I have also thought proper to make out a list of the professions followed by the police officers, so that the Commissioners may see whether such immense influence, as has been attributed to them, can in reality belong to those persons.

2127. *The same was read as follows.*

| Names of the Town Police. | Professions. | Rate and Quarters | Is the Officer's Father living. | If so, what Rank or Profession. | His Rate. | Rent of House, &c., occupied by the Officer or his Father. | Observations. |
|---|---|---|---|---|---|---|---|
| M.M. Peter Le Sueur, Constable . | Advocate . . . | 20 | Yes. | Independent. . | 80 | | |
| John Chevalier, Centenier . | Harbour Master . | 50 | No. | | | | |
| Richard Du Parcq ,, . | Independent . . | 25 | No. | | | | |
| Thomas Sorel ,, . | Soap Manufacturer. | 31 | No. | | | | |
| Joshua Le Bailly ,, . | Banker. . . . | 40 | No. | | | | |
| John Binet, Vingtenier . | Leather Merchant . | 6 | Yes. | Director of Hospital. | 2 | | |
| Philip Le Sueur ,, . | Independent . . | 10 | No. | | | | |
| John Richardson ,, . | Farmer. . . . | 2 | Yes. | Farmer . . . | 20 | | |
| Philip Fauvel ,, . | Grocer . . . . | 6 | Yes. | Farmer . . . | 15 | | |
| Nicholas Le Quesne ,, . | Farmer. . . . | 2 | Yes. | Farmer . . . | 90 | | |
| Philip Le Brocq ,, . | Grocer . . . . | 2 | No. | | | | |
| Henry Mahy ,, . | Wine Merchant . | 6 | No. | | | | |
| Philip Perchard, Police Officer | Farmer. . . . | 2 | Yes. | Farmer . . . | 20 | | |
| John Le Cronier ,, . | Independent . . | 8 | No. | | | | |
| John De La Haye ,, . | Farmer. . . . | 3 | No. | | | | |
| John Le Cras ,, . | Plumber . . . | 6 | No. | | | | |
| George Marett ,, . | Baker . . . . | 20 | No. | | | | |
| Philip Sorel ,, . | Soap Manufacturer. | 6 | No. | | | | |
| Thomas Bichard ,, . | Ironfounder . . | 6 | No. | | | | |
| Charles Le Gallais ,, . | Farmer. . . . | 6 | No. | | | | |
| George Coutanche ,, . | Independent . . | 12 | No. | | | | |
| Geo. C. Le Feuvre ,, . | Cabinet Maker. . | 20 | No. | | | | |
| Daniel Trachy ,, . | Farmer. . . . | 6 | Yes. | Farmer . . . | 20 | | |
| Thomas Monamy ,, . | Captain, Merchant Service. | 6 | No. | | | | |
| Edward Romeril ,, . | Ditto . . . | 12 | No. | | | | |
| Edward Gallichan ,, . | Ditto . . . | 6 | No. | | | | |
| John Du Parcq ,, . | Grocer . . . . | 6 | Yes. | Independent (No. 3) | | | |
| George Falle ,, . | Grocer . . . . | 6 | Yes. | Grocer . . . | 2 | | |
| George Picot ,, . | Builder, &c. . . | 6 | Yes. | Builder, &c. . | 20 | | |
| Philip Pinel ,, . | Grocer . . . . | 2 | Yes. | Grocer . . . | 30 | | |
| J. Le B. Chevalier ,, . | Iron Merchant . . | 6 | Yes. | Harbour Master, (No. 2.) | | | |
| F. J. Robillard ,, . | Timber ditto . . | 2 | Yes. | Timber Merchant | 60 | | |
| Joshua Brayn ,, . | Builder, &c. . . | 32 | No. | | | | |
| James Dumaresq ,, . | Captain, Merchant Service. | 10 | No. | | | | |
| Frs. A. Romeril ,, . | Editor . . . . | 6 | No. | | | | |
| Henry Luce Manuel ,, . | Notary . . . . | 6 | Yes. | Leather Merchant | 20 | | |
| Total . . . | | 401 | | | 379 | | |

Average, 11 Quarters and a fraction; Average about 31½ Quarters.*

2128. Mr. *Le Sueur.* I do not know whether it would come within the limits of your Commission to enquire on what side the Police generally vote, and to enquire who are the opposite party, and whether the opposite is not the party of the paid functionaries. I can bring evidence as to the rate of the parish of St. Lawrence, where the Solicitor General is a member of the Parish Assembly, and I suppose a leader in the party. There have been gross instances of injustice, which can be brought forward. There they have disfranchised the constable of the parish.

2129. Is there a Police party there?—The Police, I suppose, vote generally, against the constable: and one of the leaders, I suppose, is the Solicitor General.

* Possibly an error for 21½; $\frac{401+879}{36}$ being between 21·6 and 21·7.

JERSEY

Mr. Peter Le Sueur.
14 September, 1846.

2130. Mr. *Romeril.* Mr. Le Sueur says that I was put out of my office. The office was only worth 5*l.*; and it gave me a great deal of trouble.

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J. W. Dupré, Esq.

*J. W. Dupré Esq.* further examined.

2131. The Commissioners were asking Sir John De Veulle, what the punishments were which can be inflicted by summary jurisdiction. It appears, from what he told us, that they are not in any distinct class, but are to be collected from different ordinances?—We have, properly speaking, no summary jurisdiction. All offences come before the Royal Court, and undergo the process which is followed there. There are certain offences judged of by the Court without a jury; and it is those cases which have been alluded to, as coming within the summary jurisdiction of the Court.

2132. In those cases which are judged of by the Court without a jury, are they, in the first instance, judged by the smaller number of the Court?—Always, with an appeal to the full Court if the fine exceed 5*l.*

2133. In proceedings in which the enditement is not called, can any other punishment be inflicted, except fine, or imprisonment for non-payment of the fine?—None; sometimes imprisonment without a fine, in cases of assault and cases of that description.

2134. Then it would be imprisonment, or fine, or imprisonment for non-payment of the fine?—Yes.

2135. I take it for granted, where a party is unable or unwilling to pay the fine, the Court has the power to levy upon the goods of the party; or, if he has no goods available, to imprison him?—Not in every case. In some penal regulations, the Court has the power to substitute imprisonment for a fine, when the party condemned has not the means of paying it or refuses to pay it. In other cases, where the law only imposes a fine, without substituting any imprisonment, in case of non-payment the party condemned could only be attached as for the payment of a debt.

2136. In the event of the debtor not having effects, does not that lead to imprisonment?—When the fine is levied upon him, if he cannot pay, then an acte de prison would be obtained against him at the suit of the Attorney General. The officer of the Court would then attach his person, and take him to prison to compel the payment of the fine.

2137. Has the person so sent to prison any means of getting out except by payment of a fine?—He would have no other means, except by making what we term a cession, that is, taking the benefit of his insolvency.

2138. A cessio bonorum?—Yes.

2139. After what time might that be done?—There is no limit of time; it would depend altogether upon the circumstances of the case. The Court would use its discretion.

2140. By saying that the Court would use its discretion, do you mean its discretion as to after what length of imprisonment a party should be permitted to be let out by a cessio bonorum?—Yes.

2141. After the penalty for non-payment has become a debt, is there anything to stop his discharging that debt, like any other, by a cessio bonorum, instanter?—No. A case of cessio bonorum is only admitted upon proof that the party has no property to discharge the debt. The Court might remand him.

2142. Then it is not quite in the nature of a debt?—The Court exercises its discretion in the case of a common debt, if there is any suspicion of fraud.

2143. They would exercise the same discretion here, as in a civil case where there was a suspicion of fraudulent practices?—Yes.

2144. Am I right in supposing that, where the charge subjects a party to the punishment of fine or imprisonment, the case is tried before the inferior number, without the intervention of an enditement?—Not in every case; it depends upon the nature of the case.

2145. An accessory after the fact, for instance, is subject to fine and imprisonment by one of your laws?—Yes. I think an accessory after the fact would be tried by a jury.

2146. What the Commissioners wish to understand is what the offences are, or what is the limit within which the jurisdiction of the Court, when exercised by the inferior number without the intervention of the enditement, extends?—It extends to cases under penal regulations made by the States.

2147. Breaches of statutes made by the States?—Yes.

2148. Is it also confined to offences arising from a breach of statutes made by the States?—Yes; and to cases of assault and battery, and also to cases arising under certain Acts of Parliament registered here, for the punishing of common rogues and vagabonds, for instance.

2149. That is, under Acts of the British Parliament?—Yes.

2150. As far as I recollect the Vagrant Acts and other Acts of the same kind, they direct the party offending to be taken before one or more Justices of the Peace?—We have not the English Vagrant Act here. The Revenue Acts, for example, the Smuggling Acts.

2151. Is not it the case, with regard to those Acts also, that they direct the party to be taken before the Board of Customs, or before a Justice of the Peace?—In some cases they do; in other cases they merely mention that they should be tried by the Courts of the Island.

2152. They mention Jersey expressly?—Yes; they mention Jersey expressly.

2153. But sometimes they give you no remedy, except before a Justice of the Peace?—Yes; but the Court perform that function.

2154. The Court interprets that to apply to the lesser number here?—Yes.

2155. Is a common assault punishable by imprisonment, or by fine and imprisonment?—By fine and imprisonment.

2156. I think I understood you to say that, where the fine was above 5*l.*, the party had a right to appeal to the greater number?—Yes.

JERSEY.

Mr. Peter Le Sueur. 14 September, 1846.

2157. Where the punishment is not fine, but imprisonment, have they also such power?—I have never known a case of appeal for imprisonment only.

2158. In some cases, there is both fine and imprisonment, is not there?—Rarely, except in cases under Acts of Parliament.

2159. In cases where there were both, would the smaller number try those cases without the enditement?—Yes.

2160. There would be an appeal, of course, in respect of the fine?—Yes; and of course, if the judgment were reversed, the sentence of imprisonment would likewise be reversed.

2161. In the case of assault, however violent, the person would have no right to be tried by the enditement?—Yes; for a violent assault he would; for an assault on the highway at night; or for an assault which would do some grievous bodily harm, or put the life of the party assaulted in danger. Such case would be tried, of course, by an enditement.

2162. Could a party have the benefit of the enditement, if the beating, however violent, did not amount to a wound?—I should think not, unless the bodily harm done was grievous, though there was no wound.

2163. The wounding would not be a necessary test?— No.

2164. Would the smaller number of the Court be the party to decide whether the case amounted to grievous bodily harm?—It would. But I should think, in most cases of such a nature, where the party accused demanded the enditement, it would be given to him.

2165. In the event of the smaller number taking a view of the case deciding that there was no intent to do grievous bodily harm, would the party be entitled upon that question to appeal to the greater number?—Not unless the case was of a nature to be carried finally before the full Court. He might make that demand, and have it inserted in the Act; and then he might bring that question before the superior number, if the cause should be carried by appeal before the full Court.

2166. I gather from you that it was only where there was a fine amounting to above 5*l.* that an appeal would lie?—That is all.

2167. If this would not be a case which involved a fine of above 5*l.*, an appeal would not lie on this question?—No: in most cases, the Court would not refuse the enditement, when it was asked by the party accused.

2168. You say the Court would not refuse the enditement if asked by the prisoner?—In very few cases. Unless they were very slight cases indeed, they would grant it.

2169. Of course, a person accused before the inferior number would have a right to be attended by his counsel?—He would.

2170. Suppose a person to be charged with a battery upon another person, a severe beating, and by the party complaining it was not alleged that he intended to do the complainant grievous bodily harm; would it be open to the counsel for the accused to say, this is a case of grievous bodily harm, and ought to be withdrawn from your consideration, and submitted to an enditement?—I should think not, if, on the constable's Report, it was not alleged that there was injury done to the party complaining.

2171. Injury amounting to grievous bodily harm?—Injury amounting to grievous bodily harm.

Adjourned to to-morrow at half-past 10 o'clock.

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*Tuesday, 15th September,* 1846.

J. W. Dupré, Esq. 15 September, 1846.

*J. W. Dupré,* Esq. (Avocat de la Reine), further examined.

2172. What is the mode in which the cases alluded to in your evidence yesterday are brought before the Court? Is the party brought up in custody, or what is the mode in which the cases decided by the Court without the enditement are brought before the Court?—Sometimes the constable will present a Report without a previous arrest of the party charged. In that case the Court either order the party to be summoned by its officer, or else order the officer to take the party into custody.

2173. What is the technical term for the first of those two modes?—"Signifier de comparâitre en justice."

2174. When they order the officer to arrest, what is it called?—"Saisir de fait, et présenter en justice."

2175. Does the constable exercise his discretion whether he will proceed by arresting the parties, or whether he will apply to the Court for an order to summon or to seize them in the way you have stated?—Generally so. In some cases, the constable will apply to the Attorney General for his advice.

2176. Take the first instance in which a party is brought up under arrest. How are the proceedings carried on, supposing the party brought up before the small number, by the constable, under arrest? What is the first proceeding which takes place?—The first proceeding is the reading of the Report of the constable by the Attorney General; upon which the party charged is called upon to plead or answer to the Report. If he has a counsel, the counsel appears for him. If he has not provided himself with one, the Bailiff desires him to apply to any gentleman of the bar to defend him.

2177. Do the Bar always attend at these summary proceedings?—They always attend every Court. I do not mean that every counsel will be there; but some member of the Bar will be there.

2178. Am I right in understanding you that, in all cases of proceeding before this small number, a counsel is assigned to the accused if he require it?—Yes.

JERSEY.

J. W. Dupré, Esq.
15 September, 1846.

2179. What is the next step in the proceeding?—If the party deny the fact with which he is charged, the Court order the evidence to be summoned on a future day. "Il est ordonné que ceux qui ont connaissance des faits contenus dans le dit Rapport seront convenus." If the party puts in a special defence, there is added to the order of the Court, "et de la prétention du défendeur."

2180. That would include the witnesses on both sides?—Yes; but the party charged, though he merely put in a plea of Not guilty, and then deny the facts, may also call witnesses, as well as the prosecuting party.

2181. The latter part of the order, "et de la prétention du défendeur," applies to cases where the offence is not simply denied, but some excuse is set up for it?—Yes.

2182. If the order be "Il est ordonné que ceux qui ont connaissance des faits seront convenus," would the party have the right under that order to shew that the fact committed by him was committed under circumstances which would not incur a penalty?—I think he would.

2183. So that the power of giving evidence which the accused would have is the same, whether there is a special defence set up or not?—Yes.

2184. Is a day fixed at the same time for the appearance of witnesses?—Not generally. There may be some instances in which it is fixed; but they are rare.

2185. When not fixed, does it take place at any particular day? At the next Court day, or at any particular time?—It depends upon the Attorney General to bring forward the case.

2186. Has the party any means of compelling the Attorney General to bring on the case if it is not brought on at the next or at the next but one Court day, or at any other subsequent interval?—No, unless by application to the Court, if the case should be too long delayed and he wished to have it settled.

2187. In such a case, would the Court, exercising its discretion, order the Attorney General to proceed with the case or to abandon it?—I should think so, though I have seen no instance.

2188. The Court having ordered the attendance of those parties acquainted with the facts, how are those witnesses summoned?—They are summoned by the Vicomte, or one of the dénonciateurs, at the suit of the Attorney General.

2189. What is the meaning of "at the suit of the Attorney General?" Does the Attorney General give a list of the witnesses to the Vicomte?—Yes; and in the summons it is always put "à l'instance du Procureur Général," or, rather, "de témoigner dans l'action que fait le Procureur Général à A. B."

2190. That is the precept?—Yes.

2191. What means has the defendant of procuring the attendance of his witnesses?—He gives his list to the Autorisé du Procureur; and the witnesses are summoned also at the suit of the Procureur Général.

2192. By "suit" you mean "à l'instance?"—Yes.

2193. The Attorney General, therefore, at the commencement of the proceedings, is made acquainted with the witnesses whom the defendant intends to call?—Yes.

2194. Is it obligatory upon the Procureur Général to call all the witnesses named by the defendant?—Yes, certainly.

2195. He cannot exercise any discretion as to whether he will summon them or not?—No. I wish to add, referring to a part of the evidence I have given, that it is usual for the Bailiff to fix the days for hearing cases of that description.

2196. Cases which do not proceed to an enditement?—Yes; and the Procureur Général then brings on the cases which he may have in hand. The following are the two forms used for the summons of witnesses. The first is the form used in summonses sent to witnesses at the suit of the Attorney General when their evidence is to be put in writing; and the second is the form used when the witnesses are to be heard vivâ voce.

*The same are delivered in and are as follows.*

Mr.

Je vous signifie de comparâitre en Cour, Samedi, le jour de , 1846, instance du Procureur Général de la Reine, pour informer vers , suivant à l'acte.

(Signé) J. Le Couteur, *Vicomte.*

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Mr.

Je vous signifie de comparâitre en Cour, Samedi, le jour de , 1846, instance du Procureur Général de la Reine, pour témoigner vers , suivant à l'acte.

(Signé) J. Le Couteur, *Vicomte.*

2197. At the hearing, can any other witnesses be heard except those who are inserted in the summons which the Attorney General gives to the Vicomte?—No.

2198. In case it should happen that all the witnesses summoned should not be present, what effect has that upon the proceedings?—Those witnesses who are absent are declared to be "amercis de prison brisée:" they are then liable to be seized, and to a fine of about four shillings to the Queen, and to the costs incurred by their contempt.

2199. Can a cause proceed in their absence?—If the Attorney General and the party consent; not otherwise.

2200. Would the absence of a single witness be sufficient to stop the cause without consent?—It would.

2201. Is there no protection against a party wilfully staying away, except that which you have mentioned?—It appears from your statement that the effect of a single witness staying

away would be to delay the cause continually?—It happens very frequently that they are so delayed.

2202. The Crown, by contrivance, might continue the prosecution as long as it liked; or the defendant, by his witnesses not coming, in the same way, might continue the proceedings without end, might not he?—Not without end.

2203. What is the term to it?—If a witness were called who was absent from the island, sufficient time would be given to either party to bring the witness forward. If that time elapsed, the case would be proceeded with, notwithstanding the absence of the witness.

2204. If the witness were in the island, should you trust to the vigilance of your officers to take him and to bring him into court to depose?—Undoubtedly.

2205. But this is the only limit to the continual delay of the cause?—The only limit.

2206. The witness being supposed now to be in Court, what is the course of proceeding?—The billet is called. There is also an Act of the Court, made upon the Report of the constable when they order evidence to be called.

2207. Of course this is a criminal proceeding. Is billet the term applied to criminal proceedings?—We apply the term billet to all cases, because there would be a billet before the Court when the action is called.

2208. Your word "action" also applies to criminal proceedings?—I consider "action" to be applied to the warning or summons which is sent. In summary proceedings it is not termed an accusation.

2209. A civil cause is called an action with us. It means a civil suit.—With us it may be used in both cases. It may be used as the summons; or it may be used as the proceeding itself.

2210. In the summons which is De témoigner dans l'action, action means the accusation in that sense, does it not?—It does, in that sense.

2211. First of all, the billet is called?—Yes; and then the list of the witnesses is called over. The parties are then asked by the Bailiff if they have any recusation to present to the Court against any of the witnesses. If they have none, the witnesses are sworn by the greffier. They are afterwards heard separately, if the parties demand it.

2212. You mean, by "separately," one being in Court and the rest out of Court?—Yes. The counsel for the party charged is then heard in his defence, and the Attorney General in reply; after which the Court give judgment.

2213. Am I right in supposing that there is no written act of accusation?—The billet. We do not call it an act of accusation in a proceeding of this kind.

2214. The billet is the charge in fact?—The charge is the Report; but the billet is a document which is put in by the Attorney General, upon which the judgment of the Court is recorded. The following is the form of the billet.

"A. B. contre le Procureur Général de la Reine; l'actionnant devant ordonner par justice sur le Rapport du connétable de la paroisse de , présenté en justice, l'an 184 , le jour de , exposant que" (Here the facts set forth in the Report are inserted):

"le tout selon que plus au long est contenu au dit Rapport et en l'acte du dit jour 184 . Et ouir dépôt de témoins suivant l'acte de la cour à ce sujet."

B. C.
D. E.
F. G. } à la cause à témoigner, et ouir record d'officier."
H. I.

2214. In this case, are the witnesses examined vivâ voce; or is their evidence taken down in writing, in the same manner as it is before the smaller number, when the case is to be submitted to an enditement?—Vivâ voce.

2215. The Commissioners are informed that sometimes four witnesses are examined at once, when their evidence is taken down in writing. Of course, in this case, you do not examine more than one at a time?—No.

2216. Does not the Attorney General make a statement, previously to the case being gone into, of what he intends to prove against the party?—No.

2217. Does the trial of the case, in fact, commence by the calling of the witnesses?—Yes; first the billet, and then the witnesses.

2218. The investigation commences by the hearing of the witnesses?—Yes.

2219. When all the witnesses are heard, then the counsel for the defendant addresses the Court, and then the Attorney General?—Yes.

2220. This is the mode of summary proceeding before the smaller number?—Yes.

2221. That consists always, does not it, of the Bailiff or Lieutenant Bailiff, and two Jurats at least?—Yes. The Bailiff, or Lieutenant Bailiff and two Jurats; there are never more than two Jurats.

2222. Do not questions of pure law sometimes arise out of proceedings of this kind?—Frequently.

2223. Are they also decided by the inferior number?—Yes.

2224. In case of a question of pure law arising, is it decided by the Bailiff alone, or by the two Jurats assisting the Bailiff?—The Bailiff has no voice in the matter, unless the Jurats are of different opinions; then he gives the casting voice.

2225. Does it frequently happen that the two Jurats differ upon the law?—Sometimes, indeed I might say frequently, it is the case.

2226. There being only two Jurats, in case of their differing the opinion of the Bailiff would of course fix the law?—It would.

2227. In point of fact, before the judgment is given by the two Jurats, do they consult the Bailiff upon the law?—Sometimes; but they are not obliged to do so: they may sometimes apply to the Bailiff for advice.

JERSEY.

J. W. Dupré, Esq.
15 September, 1846.

2228. Is it their practice to apply to the Bailiff in all cases for advice?—No.
2229. Should you say they often did so?—Not often, I should think.

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Sir *John De Veulle* (Bailiff), examined.

Sir John De Veulle, Bailiff.
15 September, 1846.

2230. (To Sir *John De Veulle.*) Does that agreee with your opinion?—Sometimes they consult me, not always; I should perhaps say, not often.
2231. When it does take place, is the asking entirely at their own suggestion?—It is optional with the gentlemen of the Bench, whether they ask the President or not; they are not bound to follow his advice at all.
2232. Does the Bailiff himself ever volunteer a suggestion as to the law without their application?—Very seldom.
2233. Have you often found it occur that, where you have not been consulted, a view has been taken of the law which would not have been your's if you had been consulted?—It has sometimes happened that I have not agreed with the gentlemen of the Bench in the view they took of the case.
2234. In cases where they have not applied to you?—Yes.
2235 We are speaking, of course, of pure law now?—Yes.
2236. Has it often or ever happened that, after your opinion of the law has been communicated to the two Jurats who sit with you, they have nevertheless still taken their own view?—I think it has happened sometimes, but only seldom. I should say that, generally, the President of the Court would not volunteer his advice unless it were asked. Sometimes the President may not be on very friendly terms with the Jurats who sit with him; and, of course, he would be much more guarded how he tendered any advice in those cases, than if he were on friendly terms with them.
2237. You say, it rarely happens that the opinion is volunteered by the President of the Court. I infer from that expression, that in some rare instances it is volunteered?—Sometimes; but I should say generally not.
2238. Generally speaking, in those rare cases, with what spirit do you suppose such a voluntary suggestion would be received? With or without jealousy?—Without jealousy. Very frequently, I have found they would take the advice of the President; but sometimes not.
2239. Of course, what you have been saying now with regard to proceedings before the smaller number will also apply to cases before the larger number, where the Court sit as a Court of law?—Yes; except that, of course, it is much more easy for the President to communicate with the two Jurats who sit as the inferior number than with all the Jurats when the full Court is assembled, unless it be that the Court retire to consider their judgment in private, which they sometimes do; and then it would be discussed by every one in their private room.
2240. Is it not the case that, when you retire to consider a question in private, the opinion of the Bailiff is of very great weight indeed with the Jurats?—Sometimes.
2241. Would they not naturally have a very great deference for your opinion as the head of the Court?—Not always.

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J. W. Dupré, Esq.

*J. W. Dupré,* Esq. (Avocat de la Reine), further examined.

2242. (To Mr. *Dupré.*) After the proceedings that you have stated, the Court gave their judgment?—Yes.
2243. In the case of which we are speaking is there any appeal?—Not unless the fine amounts to more than five pounds.
2244. Are those cases generally finished at one sitting, or do they take more than one sitting to dispose of them?—Generally at one.
2245. Are the proceedings the same when the party is summoned to appear as you have detailed them?—Exactly the same.
2246. What becomes of the accused in the interval between his being taken up upon the constable's Report and the hearing of the witnesses?—He would be on bail if he could put in bail, and in prison if he could not.
2247. Might it not happen that a party brought before the Court for a very small offence might be imprisoned for a considerable time before the case was finally decided?—Not for a very long time, because, where the party is in prison, the case may be heard out of term as well as during term.
2248. The Commissioners have been told that Saturday is the day usually fixed for the hearing of those cases?—It is generally for bringing up the prisoners: but Saturday is seldom appointed for the hearing.
2249. What is the day appointed for hearing generally?—There is no particular day; any day that may be convenient with regard to other public business.
2250. Would not it depend a good deal upon the leisure of the Attorney General, or his ability to attend to the case? He is to fix the day for the witnesses to appear?—The Bailiff fixes the day for such Courts to be held; and the Attorney General then brings forward those cases.
2251. On one of those days?—Yes.
2252. So that the length of time a party might be detained would depend upon the other avocations of the Attorney General?
Mr. *Le Breton.* Whenever a day is fixed, I never put it off on account of my own avocations.
2253. Might not the public avocations of the Attorney General interfere with his bringing on the case on a particular day?—They never, when a day is fixed, prevent me bringing on a case on that day.

2254. In practice, the case is always brought on on the day fixed by the Court?—Yes.

2255. It might be more correct, perhaps, to say that it is set down for hearing on a day fixed. If there were several cases, they might not possibly all be brought on on that day?—All the cases might not be. As many as could be disposed of during the sitting would be.

2256. (To Mr. *Dupré*). Is bail ever required when a party is summoned?—If a party charged is merely summoned, he is not bound to put in bail. Bail is only required where a person is attached.

2257. In cases where a party is not under arrest, the case only comes on in Term, does it?—In Term, except in some cases under the States' regulations.

2258. The regulations of local Acts?—Yes. In one of the clauses it is often regulated that such cases shall come on during the Vacation as well as during Term. In cases where the party charged forms part of the garrison he is entitled to an immediate hearing.

2259. There are two Terms, I believe?—Yes.

2260. When are they?—The first Term commences the first Saturday after the 11th of April.

2261. Has it any particular name?—Terme d'Avril. It continues to the 5th of July. The Terme de Septembre commences upon the first Saturday after the 11th of September, and finishes on the 5th of December.

2262. It cannot commence before the 12th?—No. Saturday last was the 12th; upon which day it commenced. Supposing Saturday were the 11th, it would commence on the 18th. In the case of Easter intervening in the April Term it puts off the Term for another week.

2263. In Term are any particular days fixed for the hearing of those cases?—Particular days are appointed for these causes; but there are no particular days of the week on which they always come on. The Bailiff appoints the days, at the request of the Attorney General.

2264. Is not it the case that there are other cases, besides those which take place without the intervention of the enditement? Cases above five pounds you have mentioned: are there any others?—I know no other. They are never instituted before the full Court; they only come before the full Court upon appeal. I have sometimes seen the inferior number send a case which they considered difficult at once before the full Court, without giving judgment; but that I consider an irregular proceeding. The judgment ought to be given in the first instance by the inferior number.

2265. That is to say, in all cases where they proceed without the enditement?—Yes.

2266. Are the proceedings before the full Court upon appeal conducted in precisely the same way as you have described this to be conducted before the inferior number?—Precisely in the same way, except the Report of the constable, which, of course, being already entered, is not entered *de novo*.

2267. Are the witnesses examined afresh?—Yes.

2268. May fresh witnesses be called?—No.

2269. Can you at all ascertain when those proceedings without the intervention of an enditement or grande enquête were first instituted? Do you suppose them to be contemporaneous with the existence of the Court, or have they grown up of late years?—I think, so far as we can see by the records, those proceedings have always existed.

2270. Have you known any instances in which prosecutions have been withheld or not persisted in on condition of the parties quitting the island?—I have frequently, for very trifling thefts, for larcenies.

2271. Where do they generally go, under those circumstances?—To their own native place.

2272. Does not it ever happen in the case of natives?—There have been cases. They go where they like.

2273. As a matter of fact, where do they like to go?—Sometimes to England, sometimes to Guernsey.

2274. They do not go to France, for want of passports, of course?—No. A few years ago, Edward Le Maitre was sent away from the island.

2275. How long ago was Edward Le Maitre's case?—I do not exactly remember.

2276. Is it as much as ten years ago?—I do not recollect.

2277. Is it considered a part of the system, or merely an irregular way of getting rid of an unpleasant person?—I think, if an unpleasant person of that kind were to ask to leave the island, he would most probably be permitted to do so.

2278. You think it still a regular and legal mode of proceeding?—I do.

2279. Though not now resorted to in the case of a native?—No.

2280. They generally go to England or Guernsey?—I should suppose so, I cannot say.

2281. Is their passage paid?—Yes.

2282. Take the case of an Englishman being sent back to Southampton under those circumstances: would he go under the custody of your officer?—No.

2283. You only put them on board a ship, and you hear no more of them?—Exactly so. I must add that, on the other side of the water, they have very frequently treated us in the same manner.

2284. Not in the case of criminals, have they?—They have sent over a great many vagrants to get rid of them, telling them Jersey was a place where they could live very well, and have good wages.

2285. Vagrants have not been sent unless on the notion that they were Jersey people, have they?—I remember a case of a man being sent from Leeds or Manchester, upon his declaration, before a Magistrate, that he was the son of a man in one of the dragoon regiments, and born while the regiment was stationed in Jersey.

2286. Do you happen to know whether the father had any settlement?—I do not know. There never was a dragoon regiment here.

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2287. By what process did you get rid of him?—We paid his passage back.

2288. It was not an optional departure, was it?—No: he was found as a vagabond.

2289. Did he assent to it?—He was not brought before the Court. They sent us a batch of twenty five, I think, whom we were obliged to return on their hands as quickly as possible.

2290. Did they go voluntarily?—They had no means of existence; and they applied to the constable of the parish for relief; upon which the constable of the parish sent them back to their native places.

2291. Could the Governor send them back?—No.

2292. Mr. *Le Sueur*. There are 800 paupers sent back yearly to Southampton with their own consent.

2293. (To Mr. *Le Breton*). Are there any means of sending them back without their own consent?—If they are found disorderly, or without the means of subsistence, and brought before the Court, they are sent back.

2294. Is that a formal sentence of the Court?—Yes.

2295. Will you let us have one of those precedents?—I will look out for one, and furnish it.

2296. Sir *John De Veulle*. On reflection, I should say that, in cases of a criminal nature, the Jurats will pay more attention to the opinion of the President than in other cases, both in public and also in private.

2297. You would extend that to questions like those which arose very frequently in the trial of Marin, the questions of evidence?—Yes; they would ask the opinion of the Bailiff on such points.

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Mr. François Godfray.
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Mr. *François Godfray* (Advocate), further examined.

2298. Do you wish to address any observations to the Commissioners?—There is one thing which has appeared in the evidence of the Solicitor General and of Sir John De Veulle, which is, whether the Bailiff gives his opinion to the Jurats on questions of law. I consider that it is the Bailiff's duty, on every question of law, and even of fact, which comes before the Court, to give his opinion either to the two Jurats composing the inferior number, or to the seven or more Jurats composing the superior Court; and that, if it is not done, the system cannot work, the Jurats being elected without any qualification which ensures their knowledge of the law, and the Bailiff being the only Judge in the Court, and having always been selected from amongst those who have studied the law and practised in the Jersey Court. It was the rule with preceding Lieutenant Bailiffs to give their opinions to the Jurats: and that opinion was generally followed on matters of law, except in some cases where there might exist party or personal feeling. The Jurats now on the Bench feel so much the want of obtaining opinions on points of practice and of law that they often consult, or take the opinion of, the Greffier or Clerk of the Court. I know that, of late years, no opinion is given to them by the presiding Judge: and I consider it a very great evil, tantamount in fact to the setting aside of the institution of the Royal Court. I think that in that opinion I am supported by the opinion of every practitioner in the Court.

2299. You say that they feel the want of obtaining an opinion: do they generally ask for it?—I think they feel that it is the Bailiff's duty to give it them.

2300. They abstain from asking it?—I do not enter into the question of why they abstain from asking, not knowing their motives.

2301. They do not ask it?—No; but they often ask the opinion of the Greffier or the Commis au Greffe when he sits in place of the Greffier.

2302. What is your view of the peculiar duty of the Jurats upon having obtained the opinion of the Bailiff?—I think that the Jurats are not strictly bound by the opinion of the Bailiff; but I consider, at the same time, that, not being acquainted with the laws of the island, they would pay a great deference to the opinion of a person versed in the laws.

2303. You have stated that you spoke, as you supposed, the general opinion of the Bar?—I think, if the practitioners in Court are asked their opinion on the subject, they will all agree with mine.

2304. (To Mr. *Le Breton*). Do you agree to that view?—I do.

2305. (To Mr. *Dupré*). Do you do so?—I always have done so.

2306. (To Mr. *Hammond*). Do you agree in the opinion so expressed?—With regard to the President of our Court, I have always considered that, as President of the Court, and like every other President of a Court of Justice, the declaration of his opinion upon any points which are brought forward must be considered as part of the duty of that President, and would, I should think, be of the utmost importance to the proper administration of justice. I do not restrict it to the mere decision upon the merits of the case, but upon all interlocutory questions, and perhaps, more especially, with regard to those which concern the forms of proceeding, respecting which it often happens that very long discussions take place before the case is entered into on the merits; and that those points would be much sooner and more satisfactorily settled if the opinion of the presiding Judge were proclaimed and known to the parties, after having been heard upon them.

2307. Among the interlocutory proceedings in this Court, points of evidence take that form?—Yes. I am speaking of causes generally: I understand Mr. Godfray to mean in all cases brought before the Court. I was extending my remarks to the whole proceedings.

2308. You explained your term of interlocutory proceedings of this Court to include proceedings which sometimes involved questions of form and practice?—Yes. There may be questions as to the mode in which the action is brought, and as to the mode in which the par-

ties are brought before the Court, the mode of the summons, the form of the action, and a variety of similar cases which, of course, require to be disposed of before proceeding to the merits of the case.

2309. (To Mr. *Francis John Le Couteur*, Advocate). What do you say upon this subject?—I concur in opinion with Mr. Hammond and the officers of the Crown; but, to exonerate Sir John De Veulle, I beg to observe that Sir Thomas Le Breton very rarely expounded a case to the Jurats.

2310. Unless called upon?—Unless called on: and he never was, indeed, to my knowledge.

2311. He was Sir John De Veulle's predecessor?—Yes.

2312. (To Mr. *Peter Le Sueur*). Will you tell the Commissioners what your opinion is upon the point?—I cannot agree with Mr. Godfray, when he says it was a general rule that preceding Bailiffs or Lieutenant Bailiffs made it a rule to give their opinion to the Jurats. Sir Thomas Le Breton may have done so in many cases: but I do not think he made it a general rule, at least from what I have seen during the last four or five years that he was Bailiff. I agree, of course, as to the advantage of the Bailiff giving his opinion, not perhaps on matters of fact, but on questions of law, to the Jurats; and it has been certainly a practice lately in many cases to refer to the Greffier of the Court, who has several relations in the practice of the Court, and who takes a very active part in the political affairs of the island; so that, in many cases, he may be considerably biassed in favour of one or the other party.

2313. Can you state whether it ever happens that particular Jurats are more likely to consult one person and other Jurats another?—It may be the case.

2314. You are not aware of the fact?—I know that the Greffier and the Clerk of the Court have lately taken an active part in nearly all the judgments that have been given by the Court.

2315. Is the Greffier on the same side with the majority of the Jurats?—No.

2316. Will you explain, a little more fully, what you mean by his taking an active part in the judgment of the Court?—Consulting with the Judges, giving his opinion, raising objections.

2317. Volunteering it, do you mean?—Partly volunteering it.

2318. (To Mr. *Marett*). Will you give the Commissioners your opinion upon the subject?—When I consider the constitution of the Royal Court of Jersey, and find that it is composed of a Bailiff having for assessors twelve men elected by the people, who are not restricted in their choice to any particular class of men, it seems to me to result from its constitution that the Bailiff must be the lawyer of the Court, and has therefore not only a right, but I consider it to be his duty, to give his opinion to the Judges on all matters of law.

2319. Asked or unasked?—Yes, asked or unasked, because it is impossible for the Jurats to be generally acquainted with the law, whatever may be the extent of their general knowledge; and it appears to me that the constitution never intended that they should be lawyers. But, at the same time, I think it fair to state that, owing to the unfortunate political dissensions which prevail in this country, it may frequently happen that the Bailiff's opinion, however sound, may be rejected through animosity and personal dislike, and that therefore I am not astonished that the Bailiff should frequently refrain from offering his opinion in many cases, particularly when he is aware that those who are his assessors at the time are indisposed towards him, and would perhaps be inclined to place him in an unpleasant position if they could. I can well understand that on such occasions the delicacy of the gentleman would interfere with the duty of the Judge, though assuredly it should not.

2320. Sir *John De Veulle*. I am extremely sorry to be obliged to contradict what Mr. Godfray has stated. I believe I have only followed the practice of my predecessors. I do not recollect, since I have been a member of the Court, that it has been the practice for the presiding Judge to give his opinion the first, or in any case except the Jurats were divided. I can speak with confidence that, when Sir Thomas Le Breton was president, he never gave us his opinion unless he was asked it.

2321. How long were you a Jurat?—I think I was elected in 1827, and remained so till I was appointed Bailiff in 1831.

2322. (To Mr. *Philip Winter Nicolle*, Jurat.) Have you anything to say upon what has been stated?—I have been Jurat since Sir John De Veulle has been Bailliff, and in criminal cases, as member of the enditement, when Sir Thomas Le Breton was Bailiff: and I have never known it followed.

2323. Have you ever known Sir Thomas Le Breton volunteer his opinion?—He charged the Jury, especially the Grand Jury.

2324. The question refers to the Jurats.—I am not aware that Sir Thomas Le Breton gave his opinion, unless the Jurats were divided, unless it came to his casting vote.

2325. Supposing a point of law or of practice arises, the question now suggested is, whether the Bailiff should offer his opinion to the Jurats. Assuming one of those cases which are tried by the Court alone without the intervention of an enditement, and a question of law arising, ought the practice, in your opinion, to be that the presiding Judge should first say, "Gentlemen Jurats, the question you have to decide is so and so: this is my opinion of the law?"—I could see no impropriety in the Bailiff giving his opinion upon the subject: but of course his opinion would only prevail in the event of the Judges being equally balanced.

2326. You would not wish to be bound to follow it?—I would attach that importance to it which I thought his observations deserved. In the giving of evidence, there may be cases when a point would be mooted; but I am not aware that the course, as far as I have been present in the Court, has been different.

2327. (To Sir *John De Veulle*.) An objection to the evidence would be taken before the inferior number; but there would be an appeal to the full Court on a question of evidence,

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would not there?—The same question may be propounded again. Every question which has been mooted before the inferior Court may be mooted before the superior.

2328. So that a question of evidence might arise, and be discussed, before the inferior number, and be decided by them, and be afterwards propounded before the superior Court?—Yes: it is not often that it has happened.

2329. But that would be the law?

2330. Mr. *Hammond.* It would be reserved: it would not be like an appeal.

2331. (To Mr. *Bertram*, Jurat). How long have you been a Jurat?—Four or five years.

2332. Have you any remark to make on what you have heard?—I have myself, on various occasions, asked Sir John De Veulle his opinion upon subjects which were then before the Court; knowing that Sir John had been bred a lawyer, I have invariably taken his opinion.

2333. That is, followed his advice?—Yes.

2334. You do not, as a Jurat, remember Sir Thomas Le Breton's time?—No.

2335. Mr. *Charles De Sainte Croix.* I am requested by the Greffier, and I do also in my own name, positively and emphatically deny the correctness of Mr. Le Sueur's statement as to our volunteering our opinion to the Court. We do very frequently give our opinions to the Court, when requested to do so: and those gentlemen are very grateful for those opinions; and, I think, with very few exceptions, will confirm what I say. I confidently appeal to the Crown Officers and to the advocates of the bar, and I would do so even to Mr. Le Sueur himself, whether it is not so.

2336. Mr. *Peter Le Sueur.* In certain cases they do not wait till the Jurats offer their opinions. They may raise an objection to the opinion given by a Jurat, which of course may bring on an explanation.

2337. Mr. *De Sainte Croix.* The observation comes with a very bad grace from Mr. Le Sueur, as we have very often given our opinions upon one side as much as upon the other, even upon party questions.

2338. (To Mr. *François Godfray*, Advocate.) Mr. Marett, to a great extent agreeing with you, added something which did not fall from you.—I think my statement of the right and duty, and I may add the necessity, of the presiding Judge giving his opinion to the Jurats is fully borne out by all. One question has been put by the Commissioners, what was the political opinion of the Jurats. I must say there are only two Jurats who coincide with the Greffier and Commis au Greffe: one Mr. Marett, who has been ill, unable to attend for more than three years: the other is Mr. Le Gallais, who had been thirty four years practising as Deputy Vicomte, and as attorney. Mr. Marett was bred up as a lawyer; he has presided as Lieutenant Bailiff a long time under Sir Thomas Le Breton. He is well acquainted with the laws and usages of the Island, and therefore need not consult the Greffier nor Commis au Greffe on points of practice. Mr. Le Gallais is as much versed in the practice of the Court as any person practising in the Court; though, naturally, on some points there will even be a difference between practitioners. Mr. Le Gallais, therefore, would not call upon the Greffier or Commis au Greffe for their opinions; and the Greffier or Commis au Greffe are consulted by the rest of the Jurats, who, if there were a political bias, would not consult those two gentlemen, unless they thought that they would give them a fair and impartial opinion.

2339. Are not there three gentlemen of the same opinion?—Mr. Le Maistre is not of one opinion or the other. The Rose party put him there; but I would not say he was a Rose man: but, as I am called on to give an unbiassed opinion, I would not state that he belongs to one party or the other. I think the Jurats would be most grateful to the presiding Judge who would explain to them the laws or the practice: and I think that, in most cases, where that law and practice was clearly set forth by a person in whom they had confidence as a lawyer, they would generally, if not universally, follow it. I attribute the evils of our present system entirely to the Jurats having no one to guide them in questions of law or practice; and it is to me a wonder how men can be found to decide on questions of law without a knowledge of the law, if they have not a person to direct them and shew them what is the law and the practice.

2340. You do not agree with Mr. Marett, then, in his opinion that party feeling would make the performance of the duty difficult or impossible?—I think that on the Bench there is not one person who does not speak to Sir John De Veulle in private, except perhaps one.

2341. Is not it rather extraordinary that those Jurats who are so very anxious to be informed of the law never ask for information?—The Commissioners will pardon my not giving an opinion upon that question. There may be very strong reasons.

2342. The Commissioners will be obliged to any gentleman who will give them an answer to the question.—I will say frankly, as I am called on, that the Jurats have not confidence in Sir John.

2343. You do not attribute that to any political feeling?—No; I do not. I do not think political feeling exists between the Jurats and Sir John, if they had confidence in Sir John's legal opinion: otherwise it would be saying that the Jurats are willing to commit gross injustice and perjure themselves, which I do not believe.

2344. You think, in case of an opinion being given to them by the Bailiff from the Bench, as the lawyer of the Court, they would almost invariably follow it?—Yes; and they would be grateful for it.

2345. The question about to be put to you is of course confined to pure questions of law. In case they follow that opinion, what advantage is added to his opinion by its being followed by the Jurats?—Perhaps one single Judge presiding would have a great deal too much power and influence; and, the Jurats being there in the first place, the number of persons deciding the case would inspire more confidence in the inhabitants or the suitors, and at the same time avoid the oppressive or arbitrary decisions which might be given by one single person.

2346. You mean to say that in extreme cases they would find it their duty to differ, and

therefore that would operate as a salutary check?—Yes: and, the law being blended more or less with the fact in almost all cases, they would decide the questions of fact.

2347. With respect to the greater number giving more confidence, to what extent would you carry that? You say twelve give more confidence than one. Would twenty four give more confidence than twelve?—I do not say that twelve give more confidence than one; but it may be other persons' opinion: because I think it might be better that persons might be judged by one more than by twelve, in some criminal cases.

2348. You think more confidence would be inspired in the minds of the suitors, though you personally think it rather a popular than a correct view?—Exactly. I must say, as that has been impugned, that I have often heard Sir Thomas Le Breton, while presiding in the Court, express his opinion to the Jurats before they delivered their opinions; and on questions of practice I have often seen him stop the counsel, saying that that point was clearly established.

2349. (To Mr. *Le Breton*). Do you go the length of Mr. Marett in saying that there is a risk, in case of the presiding Judge taking upon himself to interfere more decidedly in matters of law, that party or personal feeling would render the duty onerous or impracticable?—It might render it unpleasant; but I do not think it would make it onerous or impracticable.

2350. Do you believe such feeling exists in fact to an extent that would do so?—I am afraid it does; but that is only an opinion.

2351. All the gentlemen at the Bar have told us that the Jurats are generally or even necessarily selected without any distinct reference to their legal knowledge?—Quite so.

2352. The first point that would occur to one's mind would be that, as the Jurats either follow the opinion of the Bailiff or differ from it, in case of their following it they would appear to a great extent superfluous, or in case of their differing from it they would be an impediment. What is your view upon that subject? Do you think there does exist that vice in the present system?—I think that is certainly hurtful.

2353. In a legal point of view, do you think there is any compensating advantage for that?—Not except what has been mentioned by Mr. Godfray, that suitors and the public might have more confidence in the decision of many, though not so well informed, than in that of one single Judge who was better informed.

2354. An opinion in which I understand you, as well as Mr. Godfray, do not concur altogether?—I do not.

2355. (To Mr. *Dupré.*) Have there been more cases reversed by Her Majesty in Council where the judgment was given by the casting vote of the Bailiff than where it was the judgment of the Jurats apart from the Bailiff?—I have never examined that. I do not exactly concur with Mr. Godfray in saying that the Jurats would almost always follow the opinion of the Judges. I remember two cases, one under Sir Thomas Le Breton, and one under Sir John Dumaresq, his predecessor. Sir John Dumaresq always, in every case of importance, delivered his opinion or charge to the Jurats; and I remember once, while he was so delivering his opinion, one of the Jurats told him he did not require it. Sir John Dumaresq replied nearly in these terms: "In delivering my opinion to you, gentlemen, I perform what I consider to be my duty. When I ask you for your decision, then you will perform your's."

2356. Was not it the case that Sir John Dumaresq was a gentleman of very considerable legal attainments?—Yes; very considerable.

2357. He was a great lawyer, was not he?—He was. The case under Sir Thomas Le Breton was this. Two Jurats were on the Bench with him; and each delivered his opinion. They differed; and Sir Thomas Le Breton would concur with neither of them. He did all he could to prevail on them to come to a more reasonable opinion; but they adhered each to his own view of the case; and he was obliged to give his casting vote with one of them, although he did not concur in the opinion, in order that there should be a judgment.

2358. Do you agree in the opinion that party feeling exists on the Bench to the extent which would make the giving an opinion on the part of the presiding Judge to the Jurats onerous or unpleasant?—I should not consider, if such a duty were imposed on the presiding Judge, it would be onerous or unpleasant. Certainly, if he were at variance, either from political or personal motives, with a Jurat, he might suspect that his opinion would not have all the weight which it should have; but I do not think it can be either unpleasant or onerous to the presiding Judge to give his fair and open opinion to the Magistrates before they decide. I know, in Sir Thomas Le Breton's time, I have seen him, when assisted by two Jurats who were personally and politically hostile to him, give them his opinion on points connected with practice. I have heard Jurats in that position, relative to Sir Thomas, ask him his opinion upon such points; and in those cases his opinion was most frequently followed; but of course it would not be so in every case, nor with every Jurat on the Bench.

2359. Mr. Marett and Mr. Le Breton both seem to consider that there does exist strong bias, at all events such as would call for something like an exertion on the part of the presiding Judge in giving his opinion.—I cannot see an occasion where such feeling should exist.

2360. Do you agree with Mr. Godfray or Mr. Le Breton as to the advantages of the system of Judges who are not necessarily chosen for their legal knowledge, and not bound to follow the opinion of the Judge who is?—I think that generally, throughout the Island, the people prefer the system as it now stands: but, as to my own opinion, I think that, if twelve men are unacquainted with the law, and one is a good sound lawyer, either he will lead the twelve, if they have full confidence in him, or his sounder opinion, if they have no confidence in him, must necessarily be swamped in giving a judgment.

2361. So that, in point of fact, it would want not only a very good lawyer, but a man of considerable management and dexterity in the conduct of affairs, to arrive at the right conclusion with a court so constituted?—Yes.

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2362. Mr. *François Godfray* (Advocate). I wish to add to my opinion that I consider there are other advantages besides those which have been named.

2363. (To Mr. *Hammond.*) Will you state your opinion upon the subject?—I have very little to add to what I have just now stated: but, not to be misunderstood, I will, with the permission of the Commissioners, state that the question they just now put conveys the precise view I take of the duties of the Bailiff as presiding Judge.

2364. That the Bailiff should lay down the law to the Jurats?—To the parties generally. A question is mooted before him in the Court in which he presides; and upon that he states his opinion of what has passed before him. I think, if such were the case, much which has been the subject of remark would entirely disappear; that is, supposing there was hostility, political or otherwise, between the Bailiff and the Jurats, each would be responsible for his own act; and consequently the President, quite irrespectively of the Jurats, would state his opinion upon the case which was to be adjudicated upon, without tendering his opinion to the Jurats individually. A difficulty might be felt, as has been well observed by some of the gentlemen; from the position of the Bailiff and the Jurats, if he were to tender his opinion to the Jurats, or, if the Jurats were in all cases bound to ask it in the way which has been suggested, their position might prevent the one from giving and the other from asking; whereas, if the President stated his opinion without referring more to the Jurats than to the parties concerned, of course he would be responsible for that judgment stated openly, and the Jurats would be responsible for their opinions given after they had heard it; and that would do away with all that was painful in the discharge of their relative duties.

2365. The Judge would be responsible for the law, and the Jurats for going against it?—Precisely. I think, if it were confined to the Bailiff giving his opinion in private to the Jurats, it might be a disadvantage; but at all events it would not be productive of the good which the other mode would secure, because the Bailiff might give an opinion, but the Jurats would be those who would give their decisions. The Bailiff might give an opinion for which he would not be responsible; for it might never be known: whereas the other way would have the effect of doing away with all the remarks which have been made as to the position of the parties, if they are not friendly; and it would have the advantage that, if they were all friends, there would be no kind of suspicion, if both stated their opinions publicly, that there was an influence of friendship, any more than in the other case an influence of hostility. They would take the opinion of the President quite irrespectively of those around him.

2366. You would put it precisely in the way in which Mr. Dupré states Sir John Dumaresq did?—Yes. I never saw him on the Bench: but that would quite meet my view of what would be the course to be pursued in such cases.

2367. What is your opinion upon the system, with a view to the questions which have been asked of Mr. Le Breton and others? The Commissioners wish to learn the advantages or disadvantages of the system itself, of having twelve Jurats to differ from or agree with the Judge.—I would not wish to assume any more than what I consider was the intention when the Court was so constituted, that is, that those who were to perform a certain duty were equal to it. Therefore, if you assume that those who are named to perform a duty are equal to it, I do not see there is any disadvantage that there should be twelve; but, if, on the contrary, a certain number of persons are to perform a duty to which they are not competent, I would say, reduce the number as much as possible. I think all that must resolve itself into a question upon which I cannot decide.

2368. The reason that most of those gentlemen have given for insisting upon the importance of the presiding Judge delivering his opinion is, that the Jurats, by the very constitution of the Court, are not likely to be lawyers?—That makes it more important, and more imperative that he should deliver his opinion.

2369. Assuming the hypothesis that that produces the effect of the Jurats having other good qualities rather than that of experienced lawyers, do you think there is any advantage in their being joined with the presiding Judge? Does their concurrence with the presiding Judge give force to his sentence? While, if they differ with him, do not they do damage?—That is assuming that the Judge gives his opinion. It is true that Sir Thomas Le Breton did on many occasions; and then a real advantage resulted from it, and it had always great weight. Therefore, whether there were four, or six, or twelve men, would not be of much consequence. The inevitable result would be, I think, that, if he, being a sound lawyer, for the advancement of justice and the discharge of the duties of the President of the Court, gave sound opinions, though they were not followed on the first or second occasions, they must be followed afterwards. They could not but have the influence which opinions so given must necessarily produce.

2370. Your answer rather goes to show that the presence of other gentlemen would not do harm, than that it would do good?—I paid great attention to the remark which Mr. Godfray made; and I think it is worthy of much attention: that it would inspire greater confidence in the suitors of the Court, and in the inhabitants generally, that there should be the opinion of a larger number. It might be a popular rather than a legal view of the case; but I think it would have its advantage.

2371. You are assuming, on the one hand, that they follow the opinion of the lawyer who presides, and, on the other hand, that the public have the additional advantage of their opinion; are not those suppositions to a certain extent incompatible?—There may be a concurrence in the opinions of the Judges, but not necessarily a blind following. It is the opinion of the Jurat which is given; and we are to take it that it is his opinion, and not the dictation of any other person.

2372. That is to say, it is the opinion of an uneducated man, upon a point of law, either guided or not guided by the Judge. If guided by the Judge, it is not his own opinion.—

That is assuming that he is not a lawyer. If it is a judgment which appears to result from legal knowledge, it will be assumed, by the public, that it is from knowledge which pertains to the person giving that opinion.

2373. All the learned gentlemen have put the importance of the Judge's opinion on the assumption that it is the presiding Judge who is the lawyer and that the others are not.—Supposing the presiding Judge were surrounded by the most erudite lawyers, I should say it would be still his duty to deliver his own opinion as much as in the other case.

2374. What the Commissioners rather ask is, whether, whatever other advantages there may be, it is not an evil, in itself, that the Court should be so constituted that there should be twelve people who are not acquainted with the law presided over by a person who is acquainted with it, the twelve not being bound to attend to his opinion?—I decidedly consider that that is a badly constituted Court. As the question arose as to what the duties of the Bailiff were, I restricted myself to that; but, as the question is now put, as to a Court composed of a lawyer as the President and twelve assessors who are not lawyers, I should consider it is decidedly a badly constituted Court, more especially as the Commissioners are aware that the lawyer may not have to give his opinion at all in a great many cases.

2375. Is that a Court in which the public generally, knowing it to be so constituted, would have confidence?—My opinion is, that the public would not have confidence in a Court so constituted; I may add, more especially where the diversity of functions is such as are concentrated in one Court. It is the Cour Royale; it is the Cour d'Héritage for real property; it is the Cour de Cattel; and it is a Court of Equity besides: therefore it embraces all the different functions which, in other places, generally appertain to separate Courts.

2376. Do you think that the evil is likely to be diminished or increased by the circumstance that, the gentlemen having to perform other very important functions, persons must be chosen who are fit for those legislative functions? For instance, if you looked for lawyers exclusively, you might lose very good politicians?—All those functions of the Jurats out of Court are quite of a different nature.

2377. Are not the very qualifications which may make them useful members of the States of a tendency to render them incompetent to act well as Judges?—I quite consider so.

2378. The two duties, you think, are incompatible?—Quite incompatible, in my opinion.

2379. (To Mr. *François John Le Couteur.*) What is your opinion upon this point?—I think a great deal of the evil might be obviated if we adopted the French method, that the Jurats should always confer together, not in public, but in private. I think, also, it would tend very much to counterbalance every disadvantage if we were to adopt the French plan, that the Crown officer, the Attorney General, should not be an advocate simply, but a Magistrate; that he should sum up every case, and give his opinion upon it.

2380. (To Mr. *Peter Le Sueur.*) Will you favor the Commissioners with your opinion upon the point now before them?—It has been assumed, during this discussion or examination, that the Jurats alone are party men; but it is a fact well known to every one that, during centuries, the Bailiffs have taken a very active part in the political disputes of the Island, and that many of them have been strong party men, as much so, or perhaps more, than any of the Jurats elected by the people. Within the last few years, Sir John De Veulle has kept aloof from all parties. But I think that the election of the Jurats by the people has in many cases protected the Islanders against oppression, which would have been exercised by the Bailiffs. With regard to the apparent absurdity, that gentlemen brought up to the law should overrule the opinion of a presiding Judge well versed in the law, it might be observed that questions of fact are also decided by our Court, and that, although in England the Judge may give his opinion as to what ought to be the decision of the jury, or the verdict of the jury, still the jury are not bound to follow it. So that the same objection as has just been raised could also be made against the system of the English jury.

2381. You are perhaps aware that, if an English jury give a decision incompatible with the law laid down by the Judge, it may be set aside?—It may be set aside; but it is not in every case; and, in this case, there may be an appeal from the inferior to the superior Court.

2382. (To Mr. *Marett.*) Will you favour the Commissioners with your opinion upon the subject?—Perhaps, practically speaking, one Judge might and would administer justice well and impartially, and the more so, as all the responsibility falling upon him, he would naturally be anxious to perform his duty to the best of his ability. But, in considering the merits of the system, I think it is necessary to take into consideration whether alterations, which may appear theoretically useful, would be well received by the people for whom they are intended and inspire them with confidence. Now I am convinced, from having conversed with a great number of persons in this Island on the subject, that any change by which the administration of justice would be confined to one individual, and that an individual appointed by the Crown, would meet with universal dissatisfaction. It is to be remarked that, though the Bailiff ought to be, and is, I believe, the Judge of the law, he is not, as Mr. Le Sueur I think very justly observed, the Judge of the fact; and perhaps it may be doubtful how far a purely legal education may qualify a man from becoming a sound and impartial Judge of facts. It is indispensably necessary, I should say, that in matters of practice a lawyer well acquainted with the mode of conducting business and the minutiæ of the law should give his opinion upon such questions and decide them at once. From my observations during the time I have been in practice, which has not been, it is true, very long, I have had occasion to remark that much valuable time has been wasted in the discussion of mere preliminary points which might safely have been entrusted to the decision of a single Judge, and that Judge a lawyer. But, when it is necessary to descend into the merits of a case, perhaps there are habits, and which have been acquired during a course of legal study, of making nice distinctions in which the differences are not always to be observed; I do not consider that those qualifications are precisely what are

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required for administering justice between man and man, and giving to each what of right belongs to him. I think, then, that having a number of men added, men I would say of good education, for I would consider that indispensable, men of good general attainments, would probably be of great advantage in addition to the President. They may be considered in the light of a permanent jury; and I need not say that the establishment of juries has always been considered as being that which distinguishes the English system of laws with the reputation which it has obtained throughout Europe, and which has contributed more than any thing else to throw into the shade any defects which may be found to exist in it. It is a pleasing idea to a man to think that he will be judged by one whom he has himself chosen, with whom he is acquainted, and of whose merits he has had an opportunity of forming an estimate, instead of having his life, his fortune and his honour at the mercy of a person nominated by others, whose interests perhaps at all times may not coincide with those of the people at large. With some modification in the mode of electing them, I humbly conceive that the retention of the Jurats in our Royal Court would be an advantage, and more, what Mr. Le Geyt calls it, an inestimable privilege. My remarks are made on the supposition that the Bailiff is always a lawyer.

2383. One part of your remarks supposes that the fact is inextricably mixed up with the law?—Yes. Where the question is purely one of law or practice, it might safely be left, I think, to the decision of the President alone.

2384. (To Mr. *F. Godfray*, Advocate.) You said "I attribute the evils of our present system entirely to the Jurats having no one to guide them." What are the evils of the present system according to your opinion?—The evils of the present system must be clear to every body. If a man is sworn as a Jurat to administer the laws of the country, and he is ignorant of those laws, and has therefore to give a decision in darkness, the chances are equal that he will give a wrong or a right decision. The evil is, therefore, manifest: and, when the Jurat comes on the Bench without knowing a particle of the practice of the Court, and is not guided by the presiding Judge, chance must necessarily preside or rule in the Court till he has acquired a little knowledge of the practice. But, as what one Jurat considers to be the practice is not binding upon the others, the practice of the Court must always vary; and it does so. I consider, moreover, that the Jurats placed in that position are unfairly treated, and that it must tend materially to deprive them of their moral influence and of the confidence that the public could place in them, the confidence which I consider one of the essential ingredients of justice. There are some other observations to be made on behalf of the system of Jurats: but I must premise by exactly stating to the Commissioners my position; because, in all cases, the position in which a person stands may affect or bias his opinion even unknown to himself. In 1833, I proposed a change in the institutions of the island. I proposed, with the concurrence of the majority of the States, to do away with the twelve Jurats, and replace them by two Judges elected by the people, but that those two Judges must be qualified as having been lawyers of long practice. That was a principal feature of the change.

2385. You were a member of the States at the time, were you?—I was then, and I am now, though not a member for the same parish. A Committee was named, which was supposed in a great part to be favourable to my views of the question: but such was its unpopularity that I could not afterwards obtain one single member of the Committee or of the States to join in my opinion; so great was the prejudice against paid Judges.

2386. Two of them were to be elected?—Yes. I proposed that they were to be elected by the people. The question in the present state of affairs is not, perhaps, what would be theoretically good, but what would be practicable. My personal opinion the Commissioners are acquainted with. I must observe that justice, in its general sense, is not merely a decision given between one party and the other, but it is the opinion of the suitors that they have received justice, and that therefore their differences ought to be at an end. The advantages of the twelve Judges, if they were presided over by a person able and willing to perform his duty, would perhaps satisfy more the people at large: and, on all questions, or nearly all, facts and law being blended, some persons might conceive that twelve were better than one; that is, those who favour the institution of juries in civil cases. I, for one, would be decidedly against a jury in civil cases. There are in England examples of twelve men being presided over by a Judge with the power to over-rule his opinion as to law and fact: that is, in the case of the trial of libels.

2387. Do you see any other advantage in the present system?—If there were only one Judge, if that Judge was in any way perverse, there would be no kind of redress.

2388. Perhaps, also, the Jurats may be a little check upon the Judge?—Their being obliged to join with him may have some influence over his decisions: but I consider that the Judge who was intimidated by the presence of any body would be unfit to be a Judge.

2389. Your argument as to the unpopularity of the supposed plan would be confirmed by the fact that your scheme, though it retained some elements of the power of election, was itself unpopular?—I must say that a great many who were then opposed to the plan would now be more inclined to it; but it is my firm opinion that, if the majority were consulted, they would be against it. There is another subject which I have to allude to. Mr. Solicitor General has said that some natives have been sent out of the island for small thefts. The case of Le Maitre has been mentioned: but that was not a case of theft. He was required to find bail for his good conduct; and, not being able to do so, he was allowed to leave the island.

2390. Mr. *Le Sueur.* Upon that case, there had been a complaint made to the Government; and it was sent to the States for their answer. The answer given by the States was thought satisfactory by the Government.

2391. Sir *John De Veulle.* It was sent to me; and I referred it to the constable of St. Hélier's, who proved that there was no foundation for the complaint.

2392. (To Mr. *François Godfray*, Advocate). Will you tell the Commissioners how often the two Jurats sit, and the seven?—It depends entirely upon the Bailiff: he has the appointment of the days upon which they are to sit.

2393. In the case of both the larger and the smaller number?—Yes: both the large and the small number. Generally speaking, throughout the whole term, there is what is called Cour de Samedi.

2394. On the Saturday there is almost always a Court, is not there?—For bringing up prisoners, but not for the hearing of the evidence, nor for the trial.

2395. Not for the Grande Enquête?—Sometimes, but very seldom. Saturday is usually devoted to general business.

2396. In point of fact, if a person is in custody, how long is it before he sees his Judges?—He ought to see them the first Court day.

2397. How long is that, generally?—A couple of days generally; sometimes more, sometimes less. Sometimes he is brought up the very day that he is arrested.

2398. On the average, perhaps, it is two days?—Yes; I should say a couple of days.

2399. Does it ever occur that a Court of the greater number cannot be obtained from the accidental absence of the Jurats?—Very often.

2400. Then, I presume, the consequence is the adjournment of all business which cannot be done by the three?—If it is on criminal matter, it is usual for the Court, though not perhaps strictly legal, at the request of the prisoner, to go on with the trial with less than seven Jurats. It is never done except at his request.

2401. Which request implies, of course, the consent of his advocate: he does not do it without advice, does he?—It may have happened that a person may have said "I wish to be tried," though his counsel may have advised him to wait.

2402. How is the Lieutenant Bailiff appointed?—The Bailiff appoints the Lieutenant Bailiff; he may choose him from the Bench, or not from the Bench.

2403. Does it ever happen that they are not from the Bench?—For four hundred years the Bailiffs resided in England. It was a mere sinecure in their hands; and they appointed a Lieutenant Bailiff.

2404. Mr. *Marett*. Mr. Philip Le Geyt, the nephew of the writer, about 1720, or thereabouts, was nominated Lieutenant Bailiff, though he had not been a Jurat.

2405. Mr. *François Godfray*, (Advocate). In 1790, or thereabouts, it was decided that the Bailiff had a right to appoint a Lieutenant Bailiff without his being a Jurat. The Bailiff urged very strongly, in favour of his appointment, a letter which he had received from the majority of the Court who opposed such a nomination: that there was not on the Bench a fit person to occupy the office of Lieutenant Bailiff; but that, if he engaged to appoint Mr. Dumaresq, one of the Advocates of the Court, afterwards Sir John Dumaresq, the Lieutenant Bailiff, one of them would resign to make room for him that he might be so appointed.

2406. That he might be appointed consistently with the custom?—With what they considered as the law and the custom. That letter naturally must have had great weight upon the decision.

2407. Who decided it?—The Privy Council. When the Bailiff has appointed a Lieutenant, he may remove him at pleasure.

2408. Can the Lieutenant Bailiff preside over the greater number as well as the smaller?—He can perform all the duties of the Bailiff, and preside also in the States.

2409. Though the Bailiff is in the Island?—Yes, though the Bailiff is in the Island; it is so established by custom.

2410. Mr. *Marett*. I may be allowed to add, perhaps, that Mr. Le Geyt, in his work on the jurisdiction of the Royal Court, states that he has known an instance where the Lieutenant Bailiff went to a house in the country to pass a contract while the Bailiff was presiding at the Court.

2411. Mr. *Francis Godfray* (Advocate). I think that would be a stretch of authority on the part of the Bailiff and the Lieutenant Bailiff; and I think the quotation of Mr. Le Geyt, as an authority, shews perhaps that it is very difficult to find an instance of it. When a second Lieutenant Bailiff has been appointed, it is always stated that he is to attend in the absence from the island, or in case of illness, of the first Lieutenant Bailiff; and I consider that both could not act together.

2412. Are those gentlemen sworn in?—They are sworn in as Lieutenant Bailiffs.

2413. Is there any limit or qualification necessary to the admission of the écrivains, who reduce the evidence to writing?—The Bailiff has the appointment of them; they are of modern creation; formerly they did not exist; then four were created. The number was increased, I think, to six, and now they are very numerous indeed; for I think that Sir John De Veulle has appointed so many that there must be at least thirty; and they are increasing every day. There is no qualification required but the will of the Bailiff.

2418. Who performed those duties prior to the écrivains doing it?—The Greffier of the Royal Court was bound to do it; and I think sometimes he was assisted by the Advocates. When Sir John De Veulle's father, who was clerk of the court, applied in 1790 to have his fees increased, he positively states (and that petition was drawn with the concurrence of the Bailiff and the Crown officers) that it is his duty to take down the evidence in all criminal matters. I did not know Mr. De Veulle personally; but I have always understood that he knew perfectly the rights and duties of his office.

2419. I think I understood that the écrivains pass contracts also?—Yes.

2420. Prior to their institution, who passed the contracts?—The advocates, who still continue to pass them concurrently with the écrivains.

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2421. Is there any formal admission of those écrivains?—Sir John De Veulle tells an individual "You are an écrivain;" and then he is: he is an écrivain, and no one knows it.

2422. Is it not done publickly?—No.

2423. Sir *John De Veulle.* It was stated, the other day, that the number of écrivains were limited before I came into office. I ascertained it was not so, that they were unlimited both under Sir John Dumaresq and under Sir Thomas Le Breton.

2424. Do you happen to know what the number was in fact?—I have not the documents with me; but I can show them to the Commissioners on another occasion. I think there were fifteen just before Sir John Dumaresq was appointed, and nineteen just before I was appointed. I never appoint them without requiring a certificate from the solicitor, in whose office they have served, that they are fit for the duties.

2425. The business of the Court has very materially increased during the time you have been Bailiff, has not it?—I should say that the number of contracts has of late increased: and in fact, I have been induced to increase the number because it was represented to me that complaints had been made by the écrivains that persons who were not écrivains used to prepare contracts and pass them under price, which was an evil. That led me to increase the number of écrivains. I offered to the écrivains, if they could agree to regulations, among themselves, to prevent persons not écrivains passing contracts, I would assist them to the utmost of my power. Mr. Godfray has said that it was a stretch of authority on the part of the Lieutenant Bailiff to go and pass contracts and do duty while the Bailiff is in the island. I believe I have never asked the Lieutenant Bailiff to preside for me in Court or in the States except when I was ill or absent from the island, or in a case in which I was personally concerned. With regard to contracts, I have a great deal of business; I am obliged to sit all day in Court; and it would frequently be impossible for me to go to distant parts of the island to pass contracts for people who are ill. Then I have asked the Lieutenant Bailiff to go. It would be impossible for me in Term time to go to distant parts of the island to pass them very frequently. I am not aware that any inconvenience has resulted from that fact. If I cannot go, the solicitor would say it was very important, and I should leave it to the Lieutenant Bailiff to pass them when it suited his convenience.

2426. Mr. *François Godfray.* (Advocate). I do not know that contracts have been passed by the Lieutenant Bailiff or Sir John De Veulle when he was sitting in Court: my opinion is given in general terms. A contract is an Act of the Royal Court, the parties stating that they appear devant justice to pass that contract. The Commissioners have asked whether the business of the Court has increased of late years. It has diminished more than one half.

2427. Not the business of the Criminal Court?—No; of the Civil Court. Mr. Marett says it is a great advantage for a person to be judged by a person whom he has elected; but, as in an election there is always a majority and a minority, it may be very disagreeable for a person to be judged by a person whom he has not elected.

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Mr. Peter Le Sueur.

Mr. *Peter Le Sueur* further examined.

2428. Will you explain how the evidence taken by the écrivain is taken down? What is the step which makes it a record of the Court?—As soon as the witness has signed the depositions, it is handed over to the Greffier of the Court, and is kept in his custody.

2429. It is in the custody of the Greffier?—Yes.

2430. It then forms a document?—Yes.

2431. It is not signed by the Greffier, I believe?—No; but the Act of the Court records the names of the witnesses who have been heard.

2432. Is there any interval, after the taking of the prisoner, at the end of which it is necessary to produce the information?—If the suit is not proceeded with within a year and a day, the prosecution drops.

2433. Supposing a man were taken up to-day for a supposed theft, and he found the information did not come, what redress has he till the year and a day is out?—He can complain to the Court: I cannot say exactly what redress the Court would give: but it is the duty, of course, of the Attorney General to bring those cases forward with as little delay as possible: and cases are generally brought on, if the Attorney General does not summon them himself, on an application being made to him by the party or his Advocate. There was a case before the Court in which Mr. Godfray was defendant; and he applied to the Court to have it brought on. I do not know whether the application was complied with or not.

2434. Mr. *F. Godfray,* (Advocate). No; I was decidedly refused, the Bailiff saying he would not appoint a day unless the Attorney General asked one, and the Attorney General saying he was ordered by the Lieutenant Governor not to ask one. I was prosecuted at the request of the Lieutenant Governor.

2435. (To Mr. *Le Sueur.*) In that case it would drop in a year and a day?—Yes.

2436. The power of acceleration strictly rests entirely with the Procureur Général?—Yes.

2437. Unless the Solicitor General's views were correct, that the Court have the power to compel him?—I think the Court ought, and that it would have the power, to do so, if it was willing to exercise that power. When two parties are before the Court, the Attorney General and the defendant, I consider that both parties are bound to submit to the decision of the Court.

2438. You could hardly tell us within what limits a criminal prosecution ranges?—Yes: when a person is in gaol, by reference to the prison books, I think it may be ascertained. I think that the trial is generally over in two or three months. The average perhaps does not exceed two months.

2439. Has the enditement any power of retrenching or cutting away any of the evidence taken before it?—No; the evidence is put into their hands; and they return it to Court in the same state.

2440. Can any document cease to be a document in Court by any act of the enditement?—No. At the same time I must say that the Vicomte, or Deputy Vicomte, or one of the dénunciateurs, always retires with the enditement, and with the grand enquête, which I think is a very bad practice.

2441. He remains with them, does he?—He remains with them. On one occasion, I think, the enditement decided to lock the Vicomte, or the Deputy Vicomte, out.

2442. If the men of the enditement were to do such a thing as to tear up or destroy any of the Information, of course they would not be acting according to law?—It would be an illegal act; and I do not suppose that the possibility of such a thing being done has ever entered the mind of any of the authorities here.

2443. Was not there a report that it was done in the case of Nicolle?—The most absurd reports have been in circulation as to that particular trial.

2444. Was there such a report?—Perhaps not of their having destroyed, but of their having put away, not attaching any weight to it, one of the depositions. It was afterwards represented that they had torn it.

2445. The *Viscount.* I was in charge of the papers on both occasions. I can positively assert that nothing of the kind took place.

2446. (To Mr. *Le Sueur.*) Was every paper that was read to the enditement read before the grande enquête?—Yes.

2447. We observe that the gentlemen who favour us with their answers in writing do not strictly agree as to the effect of an abandonment of a prosecution by the Procureur Général. The greater number say it is distinctly an acquittal. Sir John de Veulle simply says, there is no instance of a prosecution afterwards.—Supposing a person had been put on his trial, and the Attorney General had abandoned his prosecution, and afterwards some very important evidence was discovered, I do not see any impossibility in its being brought before the Court again. I allude to cases that will very seldom occur. I think, in my recollection, there were two cases which were to go before a jury, but the evidence was insufficient, and the Attorney General abandoned the prosecution.

2448. At what stage?—When the depositions of the witnesses were taken down in writing, the Attorney General said it was clear that the evidence would be insufficient; and, on his recommendation, the Court liberated the prisoner. In such a case, if important evidence was discovered afterwards, I think the accusation might perhaps be brought again before the Court on a fresh Report from the constable or the Police, stating the discovery of such evidence: but such a case has not occurred to my knowledge, and is not likely to occur. In those cases which I have stated, the act of the Court says only libéré.

2449. Can the Procureur Général abandon a prosecution unless there is an absolute act of the Court?—The prosecution may drop by not being brought before the Court, within a year and a day.

2450. It cannot be put an end to by the Procureur Général within that time, unless there is an act of the Court, can it?—I should think not.

2451. Mr. *F. Godfray* (Advocate). When the Attorney General abandons a prosecution, the Court make an act in the same terms, that the prisoner is libéré de l'accusation, and he is put out of prison.

2452. I suppose, when a verdict plutôt innocent que coupable is taken, it is followed by a judgment of acquittal?—Yes.

2453. (To Mr. *De Ste. Croix.*) What is the langauge of the Court in such cases?—"Partant, conformément aux conclusions du dit Sieur Procureur Général de la Reine, la Cour l'a déchargé de l'accusation, et libéré de prison," or "de son cautionment," as the case may be.

2454. Is there any difference in the judgment in the case of an abandonment?—I have known very few cases of abandonment of a prosecution established by an Act of the Court. Sometimes the Procureur Général states that he has no proof sufficient to establish crime: the prisoner is then liberated. Here is the form of the Act in such a case. "Edmond De Than, convenu à l'instance du Procureur Général de la Reine, pour ouir dépôt d'informateurs sur l'accusation qui lui est faite en conséquence du Rapport du connétable de la paroisse de St. Hélier; le tout selon que plus au long est contenu au dit Rapport, et en l'Acte de la Cour daté l'an 1846, le 2e jour de Mai. Mr. John Vaubrook, Mr. François Godfray, Mr. Thomas Godfray, Mr. Jean Nicolas Le Bailly, Mr. George Remy, Pierre Le Sueur, Ecr., Mr. George Allwright Fry, à la cause à informer, et ouir record d'officier. Après que les dits témoins ont été entendus par serment, le dit Sieur Procureur Général de la Reine a représenté à la Cour que, faute de preuves suffisantes, il est dans l'impossibilité d'établir l'accusation. Partant, conformément aux conclusions du dit Sieur Procureur Général de la Reine, la Cour l'a déchargé de l'accusation, et libéré de prison."

2455. (To Mr. *Le Sueur.*) Is not the accusation of the Procureur Général drawn up before there has been any deposition on oath at all?—Yes; it is drawn up on the report of the constable.

2456. The Commissioners have also been told, in the written answers, that a charge, when made, cannot be altered?—I know of one case where a prisoner had been sent back by the Court; but I think they were still in Court when the Attorney General perceived that he had made a mistake in the accusation; and they were again brought forward, and the accusation was corrected.

2457. The Court allowed the amendment?—Yes.

2458. Was that a mistake that arose from an informality on the face of the accusation, or

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was it an inconsistency of the sworn evidence with the accusation?—It was a mistake in drawing the accusation.

2459. It was discovered before the evidence was given?—Yes; after the evidence is given, or when a witness has been heard, the accusation is never varied or amended.

2460. The Commissioners have had from Mr. Dupré to day an account of the mode in which the witnesses are summoned where the prosecution is carried on without the intervention of an enditement. Will you tell us the mode of proceeding to obtain the attendance of witnesses when the proceeding is by enditement? He told us that the mode was, that the Attorney General delivered to the Vicomte a list of the witnesses to be called on behalf of the prosecution, and also a list of the witnesses which the prisoner proposed to call; that then the witnesses included in that list would be called; and that all must be present at the time of the hearing. Will you tell us the mode of proceeding with regard to summoning witnesses when the case goes to an enditement?—As soon as the prisoner has pleaded Not guilty, the Attorney General is entitled to summon the witnesses who are called informateurs. The Court allows the Attorney General to call witnesses.

2461. Are they called at that sitting of the Court, or at a subsequent sitting of the Court?—At a subsequent sitting of the Court. They are summoned by the Vicomte, or one of the denunciators, at the request of the Attorney General. The witnesses for the prisoner are summoned at the request of the Attorney General, on a list being given to him or to the Crown Solicitor.

2462. Before the Attorney General summons any witnesses, is it necessary that he should send the list of all the witnesses he means to call?—No; he may summon them one by one. The same right also belongs to the prisoner.

2463. When he has permission to inform, I understand you that the witnesses are called at some subsequent day. Does the day at which the witnesses are called depend upon the Attorney General to fix it?—The Bailiff appoints a day, at the request of the Attorney General.

2464. In the event of the Court not being able to take all the informations on that day, what takes place?—The Court allows the Procureur Général to inform further, when either the same witnesses can be called again, or other witnesses.

2465. Does that continue from Court day to Court day, till the evidence of the Procureur Général is exhausted?—Yes; and also the evidence that the prisoner may have to bring forward.

2466. Is the list of the witnesses which the prisoner intends to bring forward first submitted to the Attorney General before they are summoned?—The summons mentions that the witnesses are summoned at the request of the Attorney General; but it is a matter of course that the Attorney General will summon or cause to be summoned any witnesses who may be required by the prisoner.

2467. Does the Attorney General know what witnesses the prisoner's counsel intends to summon before they are summoned?—Yes.

2468. Is the same course pursued as to those witnesses which has been pursued with regard to the witnesses for the prosecution?—Precisely.

2469. After the prisoner has called all the evidence which he intends to produce, has the Attorney General the power of calling fresh witnesses?—Until the case is before the jury, he has that power.

2470. Does that extend to calling fresh evidence to supply some defect which there may be in the proof, as well as evidence to contradict the evidence for the defendant?—Yes.

2471. In that case, I take it for granted that the counsel for the prisoner would have an opportunity of cross examining those fresh witnesses?—Yes; and, if he thinks proper to call other witnesses to contradict their evidence, he may do so.

2472. There is no time at which either party cannot call fresh evidence?—There is not; but, of course, the Attorney General and the counsel generally agree when the evidence is complete.

2473. Mr. *F. Godfray* (Advocate). There is an observation I should wish to make as to summoning the witnesses. Mr. Solicitor General, who generally acts for the Crown and not for the prisoner, stated that the witnesses are always summoned at the suit of the Attorney General. A party who is prosecuted, when the case is not to go before a jury, may have his own witnesses summoned; and the Attorney General does not know the names of the witnesses before they would be in Court.

2474. Mr. *Dupré.* I know that has been done of late; but that is not the practice of the Court.

2475. Mr. *F. Godfray* (Advocate). There was another observation as to witnesses. Where the prosecution goes before a jury, the accused does not give the names of his witnesses before the Attorney General has called and heard the witnesses for the prosecution; that is his right.

2476. The Commissioners have been told that there is no final swearing of witnesses for the prosecution till the parties agree that they have done?—It would be considered very unfair for the Attorney General to call witnesses to material facts after hearing the evidence of the accused party.

2477. In cases in which the facts deposed to by the defendant's witnesses are new, the Attorney General has the right, and exercises it, to call fresh witnesses?—Yes.

2478. (To Mr. *Le Sueur.*) Can the Procureur Général object to a witness being called, on the ground of his irrelevancy, before he is sworn?—No, except on the gronnd that he is a relation of the party. The prisoner is not obliged to inform the Attorney General that he calls a particular witness to prove such a fact: therefore, as to relevancy, the Attorney General can know nothing of it.

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2479. As to personal incompetency, he must be called, we understand, but may be objected to before he is sworn?—Yes.

2480. The Commissioners wish to know how far the strict legality of the evidence which has been received and taken down, and is in custody of the greffier, can be discussed and disputed after the enditement is summoned and sitting in the Court?—There is no way of objection to it, except by doing so before the inferior number, and afterwards bringing it before the superior number.

2481. Mr. *Marett.* With reference to what was said as to the Lieutenant Bailly, I would add that the power of the Lieutenant Bailly ceases with the death of the Bailly who appointed him, and that, during the interval between the death of the former Bailly and the nomination of his successor, a delegate is appointed by the States.

Adjourned to Thursday next, at half past 10.

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*Thursday, 17th September,* 1846.

Robert Pipon, Marett, Esq.
17 September, 1846.

*Robert Pipon, Marett, Esq.*, further examined.

2482. At what age should you consider a person would be held responsible to the criminal law?—I am not aware of any law which restricts the responsibility of an accused person to any particular age: but I believe that the invariable practice has been, not to punish individuals who were of the age of seven or below that age. At least I have never known an instance. I have frequently seen children of twelve and thirteen, even eleven years old, punished for larceny.

2483. Mr. Hammond, in his answer, does not advert to the definite age of seven as having, in practice or by specific law, been the age adopted at which a person would be held responsible to the law.—Generally speaking, in those doubtful cases, we would follow the maxims of the English law.

2484. Whence do you get the age of seven?—It would be hard to say why so much importance is attached to the number seven: but in many cases it appears to be considered that a child is then out of infancy. If, for instance, a person is condemned to maintain an illegitimate child, generally the provision is limited to the age of seven. It appears that it has generally been considered, that at that age a child obtains a certain amount of reason enabling him to think and act for himself.

2485. Mr. *François Godfray* (Greffier). I have seen some of the old authors that mention seven: but I have seen, in Terrien, that they cannot be prosecuted till they reach nearly the age of puberty; and I infer, from that, that ten would be about the age. I do not know a case of a child being prosecuted till he has attained the age of ten years.

2486. (To Mr. *Marett.*) The Commissioners, therefore, may take it generally that there is no very well defined rule upon the subject?—I do not think there is.

2487. (To Mr. *Le Breton.*) Will you favour the Commissioners with your opinion upon the point, as to the age at which a person becomes responsible to the criminal law?—There is no positive law upon the subject.

2488. You agree with what has been said by Mr. Marett, that there is no established positive law upon the subject?—There is not.

2489. Mr. *Dupré.* In point of practice, I have seen very young criminals brought before the Court for petty offences: but, whether of the age of seven, eight or nine, they generally, or in fact always, I think, were delivered to their parents with an injunction from the Court to take care of them. I have never known an instance of a child having been regularly tried for a crime under the age of eleven years.

2490. (To Mr. *Marett.*) Another question was asked by the Commissioners, how far responsibility for a crime was removed by the insanity of the party. Will you tell us, generally what is the law upon that subject?—Undoubtedly, a person, who is found to be insane upon his trial, is acquitted, as a matter of course.

2491. You say, if a person is found to be insane upon his trial. Is the fact of insanity tried before the man is put upon his trial for the crime, or is the question of insanity mixed up with the question whether he is Guilty or Not guilty of the crime?—The Commissioners are aware that there is no previous examination before a person is put upon trial. There is a Report from the constable; and the Procureur Général founds an accusation upon the Report. The Informateurs are called; and the Jury must judge whether the person is insane or not.

2492. The process is this, I think: that, upon the act of accusation being laid before the Court by the Attorney General, the prisoner pleads. Would it be competent for his counsel to plead that he was insane at the time the act was committed?—Yes.

2493. Instead of "Non coupable" or "Coupable"?—Yes: perhaps it would be matter of doubtful prudence to plead "Coupable," and then "Insanity;" but he would have the privilege of doing so, no doubt.

2494. Supposing a plea were to be put in of insanity, as an answer to the accusation; how would that be tried? Would it be tried by the Court?—I think it ought to be sent before the Jury, because the informateurs or evidence of some kind must naturally be heard to establish the fact of the insanity. Under those circumstances, I consider that the enditement would be the only body having a right to examine into the question. That is where the accusation is of such a nature as to be brought before the enditement; for in petty cases, in cases of petty larceny, the Court would be quite competent, no doubt, to decide upon the matter. Occasionally, such delinquencies are tried before the Court, where the prisoner or his advocate consents to it. A very trivial case is sometimes tried before the Court, and decided by the Court; but it must be remarked that the consent of the prisoner is required.

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2495. The question which I am addressing to you can only suppose a trial by the enditement.—I consider that, in all cases where the accusation is of such a nature as to be referable to the enditement, the enditement alone is competent to judge of the fact of the insanity.

2496. On a plea of insanity being put in?—Yes.

2497. Do you, in your experience, know of any case of the kind occurring?—No; not where a plea has been specially put in. A case lately occurred in which insanity was attempted to be proved; and the question was pleaded before the enditement.

2498. (To Mr. *Dupré.*) Are you acquainted, in your experience, with any plea of insanity ever being put in, and the issue being raised of "Sane," or "Not sane," only?—I do not know a case of it.

2499. (To Mr. *Marett.*) In the Coustumier there are some regulations upon the subject, are there not?—Yes; but it is merely stated that, if a person is found to be insane, his friends or relations are to take care to put him in prison and maintain him, and so forth.

2500. The gentlemen, who have answered this question, make a distinction between minor and greater offences. The substance of the answer returned by the Bailiff and Jurats is, that, for a minor offence, the Court would order the lunatic to be placed under the care of curators. If acquitted of a capital crime on the ground of insanity, they say, the Court would refer the proceeding to Her Majesty, and remand the prisoner, till the pleasure of the Crown were known. They do not state, in either case, how the fact of insanity is to be arrived at.—I believe I have stated what would be the practice, judging by analogy. The few cases that do exist do not bear precisely upon that point.

2501. Supposing this were the state of facts. A man is charged with a crime, which would be tried by the enditement. The course his advocate takes is to say, the prisoner is insane at this time, and ought not to be tried, because he is so. What would be the course of proceeding in that case?—I am not aware of any case of that kind having happened.

2502. Would that be a question triable in any way?—I should consider, certainly, acting upon the principle laid down, I think, in Terrien or in Rouillé, that in those cases it was usual not to punish the individual, who had committed a crime, if at the time of his trial he were insane. I consider that the advocate might put in a plea of present insanity; that that plea might be tried; and, if found true, the individual would be acquitted, as an insane person.

2503. Would it be tried by the Court or by the enditement?—It appears that it should be tried by the enditement.

2504. You do not know of any instance?—No.

2505. (To Mr. *Dupré.*) Are you aware of any instance?—I am not aware of any instance: but, I think, if we looked into the old Coustumier, we should find that no trial would take place before the enditement or grande enquête. "Se aulcun est hors du sens et il occist ou mehaigne ung homme par sa forcenerie, il doit estre mis en prison, et estre soustenu du sieñ, etc. Par ce texte appert q̃ se aulcũ hors du sens mehaigne ou tue ung hom̃e, il ne doibt pas estre puny capitalement, et aussi ne recepveroit on aulcun à faire gaige cõtre luy. Mais il seroit mis en prison à tousjours, et soustenu du sien, et des communes omosnes ainsy q̃ le texte le declaire." It is said that he could not be judged capitally, and battle could not be waged against him.

2506. The gloss goes on to say, "Se aulcũ est en telle manière forcené que l'en le doye doubter de sa forcenerie qu'il ne trouble le pays ou par feu ou par aulcune chose, etc.. Par ce texte peut apparoir que se aulcun est forcené en telle manière que l'en doubte qu'il ne trouble le pays, et qu'il face aulcun mal par sa forcenerie, ceux du voisine sont tenus le venir dire à justice affin qu'elle y pourvoye et se ilz ny vieñent, et le forcené faict aulcun mal ilz l'am̃deront; lors quand les voisins l'auront insinue à justice elle y doibt pourvoir de son office. Cest assauoir il doibt estre lye et baille en garde à ses amys et ses biens aussi, lesquelz le doibuent garder en tel lieu qu'il ne face mal; et s'il n'a biens ne parentz tous ceulx du voisine, chascun selon sa faculté, luy doibuent aider à luy pourvoir, pour la sustentation de sa vie." Would not it appear as a question for the Court upon that?—Yes; we have exactly that practice with respect to persons in that unfortunate situation. If a man is insane, it is the duty of the constable, on the information of the neighbours or friends, to report the same to the Court through the Attorney General. Then six of the principal inhabitants, being his nearest neighbours, are called to give information on oath to the Royal Court on the state of that person's mind; and, if they find him to be insane, then the Court place him in the custody of a curator, who is bound to take care of him and deprive him of the possibility of doing mischief. That answers the second case, which has been put.

2507. Do you think that course would be pursued by the Court in case a person pleaded insanity as an answer to a crime?—I think, in that case, the informateurs would be heard in the first instance, and that, from the depositions, the Court might decide the case, or send it to a jury if there should be any doubt.

2508. You mean,, by sending it to a jury, having him tried by a jury mixing up the question of insanity with the question of culpability?—Yes.

2509. When the proceeding takes place with the six neighbours, do they specifically find the time at which the insanity began to exist?—No; they do not.

2510. Suppose a person were put into the hands of a curator, and it appeared that he had recovered and were well again, and he were let out of their hands: would he then be tried for a crime committed before he was in the hands of the curator?—I know of no law, either in the ancient law of Normandy or in our practice, which can elucidate that question.

2511. Do you recollect, in your experience, any plea of insanity being set up and tried as a separate question?—I do not remember one.

2512. Mr. *Hammond.* I mention, in my answer to that question, that the fact of a prisoner's insanity, at the time he committed the act for which he stood charged, would have the effect of staying proceedings, if ascertained before he was regularly arraigned; and ulterior measures

would be adopted by the Court, consequent upon the fact. Here is a Rapport upon Du Bois' case, which I will hand into the Commissioners.

*The same was read as follows.*

2513. " Mai 26. L'an mil huit-cent vingt-un, le vingt-sixième jour de Mai.

Par devant Thomas Le Breton, Escr., Lieutenant de Monseigneur le Bailly de l'Ile de Jersey, assisté de Phillippe D'Auvergne et Thomas Anley, Escrs., Jurés.

Le Procureur Général du Roi a donné lecture à la Cour d'un Rapport du centenier Marett de la paroisse de St. Brélade, présenté en justice par le connétable de la dite paroisse, exposant que, Lundi, 21e jour de Mai, 1821, environ les sept heures du matin, il fut informé, de la part de Mr. William Amy de la paroisse de St. Pierre, que George Du Bois, habitant de la paroisse de St. Brélade, venait d'assassiner Jeanne Amy sa mère: le dit centenier se rendit au plutôt au domicile de la dite Jeanne Amy, où il la trouva sous les soins du Docteur Morton et de plusieurs autres personnes, lesquels l'assurèrent qu'elle avoit effectivement reçu de grièves blessures de la part du dit Du Bois, son fils, par le moyen d'une fourche. Que, le dit Docteur Morton ayant de plus informé le dit centenier que les blessures que la dite Jeanne Amy avait reçues étaient d'une nature si allarmante qu'il ne pouvait répondre de sa vie, le dit centenier crut devoir saisir la personne du dit Du Bois. Et, le dit connétable ayant en conséquence présenté le dit Du Bois en justice, après que le dit George Du Bois a été entendu, et ne paroissant pas que la dite Jeanne Amy soit hors de danger, il a été envoyé en prison, pour être reproduit, et qu'il soit procédé vers lui selon que les circonstances pourroient exiger: instance du dit Sieur Procureur Général du Roi."

2514. Mr. *Hammond.* The man in that case was put in the hospital, and remained there as a notoriously insane person. Nothing more was done, because it was ascertained that the man was completely *non compos;* he was put in there, and, I believe, is there to the present day.

2515. Mr. *Marett.* The Commissioners were asking me how the Court would act if a plea were put in that the prisoner was insane at the time of the trial. I should say that we should be guided by this passage in Terrien, at page 496. " Est il opinion de Guiller. Benedic. que des délicts mesmes qu'il aurait commis devant sa fureur, il ne peut estre puny que par ses biens, et non pas en sa personne pour ce qu'on ne doit donner affliction à l'affligé." A distinction appears to have been made between a person insane at the time of committing the act, and a person who became mad after its commission. It is said in Terrien, " il ne peut estre puny que par ses biens." Following the analogy of our present system, there being no examination previous to the committal, but the prisoner being presented before the Court, the Procureur Général forming his accusation and the prisoner being called upon to plead at once, as the necessary course is for the Court to allow the Procureur Général to inform the moment the Report is presented, as the Court, without the consent of the party, cannot decide upon any facts so brought before them, the facts must go before the enditement.

2516. In case of his being found insane, what becomes of the accused party? Is there any statutable law upon that subject, as to what is to be done with such parties?—There is no Act of the States, nor any Act of Parliament applicable to us, that I am aware of, and no Order in Council upon the subject.

2517. Suppose the jury found a verdict of " Not guilty" because the prisoner was insane at the time of committing the act, what would be the form of the verdict?—They would bring in a verdict that he was innocent, stating their reasons.

2518. If their reason were that he was insane, how would that be expressed?—It would depend upon the jury themselves, how they would word their verdict. If they wish to give a special verdict, they word it according to their view of the case.

2519. What would then take place?—I consider that the course would be for the Procureur Général to summon seven of the friends, relations or neighbours of the insane party, for the purpose of appointing a curator or guardian.

2520. (To Sir *John De Veulle.*) Is there any distinct law upon the subject?—The following is an Order in Council in a case of that kind.

*The same was read as follows.*

*A la Cour Royale de l'Ile de Jersey.*

L'an mil sept-cent quarante-cinq, le dixième jour d'Octobre. Par devant Phle: Le Geyt Escr Lieutenant de Monseigr le Bailly de l'Isle de Jersey, assisté de Guillme Dumaresq, Michel Lemprière, Elie Dumaresq, Jean Le Hardy, Edod Marett, Phle Anley, Jean Poingdestre, James Pipon, Jean Dumaresq fs Elie, et Jean Dumaresq fs Jean, Escrs, Jurats.

Dlle Rachel Dumaresq Veuve de Mr Nicas Le Marquand ayt cejourd'huy produit en Cour Séante un gracieux Pardon octroyé p leurs Excellences les Seignrs Justrs et les très Honobles Seigrs du Conseil Privé de Sa Majesté à Jean Gasnier du Crime de Meurtre p luy Comis sur la persone dudt Le Marquand pour la vie dudt Gasnier seullemt et non por Sa Liberty. Après Lecture faitte dudt pardon datté du 18e Juillet 1745. Il est ordonné qu'il sera entériné aux rolles de la Cour Royalle de cette Isle au livre appointé por l'entérinemt des Ordonnances qui viennent de la pt de Sa Majesté: et, vu le desrangement d'esprit du dit Gasnier, il est ordonné qu'un Curateur luy sera etably afin de preparer un lieu propre por le loger en sureté, quel lieu, lors que preparé, sera examiné pr le Vicomte, qui s'y transportera por en faire Rapport, pour qu'après tel Rapport fait et le lieu trouvé convenable led Gasnier soit, conformémt audt Pardon, eslargy de prison et dechargé de toutes autres poursuites et en obéissance à isceluy Pardon gardé, enfermé, et à la chene sous les soins de son Curatr, pour prevenir que le dt Gasnier ne commette aucune violence ny outrage à autruy ny à luy même. Duquel Pardon la teneur ensuit.

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Robert Pipon Marett, Esq.,
17 September, 1846.

*Locus Sigilli.*

*At the Council Chambre, Whitehall, the 18th day of July, 1745,*

Present :—

Their Excellencys the Lords Justices.
Lord Chancellor.
Lord Privy Seal.
Marquis of Tweedale.
Mr. Chancellor of y^e^ Exchequ^r^.
Lord President.
Duke of New Castle.
Earl of Cholmondeley.
Earl of Bath.
Lord Monson.
S^r^ Will^m^ Yonge.

Upon reading at y^e^ board a Report from y^e^ Right Honourable the Lords of the Committee of Council for the Affairs of Jersey and Guernsey, dated the 28th of last month, in the words following, viz. :—

" Their Excellencys the late Lords Justices having been pleased, by their Order in Council " of the 13^th^ of October, 1743, to referr unto their Comitty a representation of the Royal Court " of the Island of Jersey, setting forth that, upon the tryal of John Gasnier of that Island " for the murder of Nicholas Le Marquand his father in law, the Jurats of the said Royal " Court, after having proceeded to call a Jury or Indictment, and not agreeing among themselves " in what manner they should proceed further against the said Gasnier, thought proper to " transmit the whole process to His Majesty in Council to know His Royal will and pleasure " thereon: That the reasons of this application are grounded upon the dismal condition and " allienation of mind in which they have during a long process found the prisoner, who had, for " some years before the said murder, been observed to have lost the right use of his senses, and, " this increasing daily upon him, his madness came to that degree of fury that at y^e^ request of " his relations he had been, by Order of the Royal Court, to prevent violence and mischief to " himself or others, for some time chained at his own house before the said murder was com- " mitted, and it was during a fatal interval of his liberty, which by the negligence of his keep- " ers he found means to obtain, that he is said to have committed the said murder, since which " time it is notorious that there has been no visible alteration in him but for the worse, insomuch " that he may be said to have entirely lost his senses without any hopes of a recovery, and " therefore the said Royal Court recommend him as an object worthy of His Majesty's mercy " so far as relates to his life, but not his liberty. And His Majesty having been pleased, by " His Order in Council of the 29th of November, 1743, to referr unto this Committee the " humble petition of Rachel Dumaresq, widow of Nicholas Le Marquand deceased, praying, " in regard to the distracted state of mind of the said John Gasnier, that His Majesty would " vouchsafe His Royal favour and Pardon to him, or to make such other order in the premises " as to His Majesty should seem meet: The Lords of the Committee, in obedience to the said " Orders of reference, this day took the said representation and petition into their considera- " tion, and examined into the proceedings transmitted by the said Royal Court, and have been " attended thereupon by counsel in behalf of the said Gasnier: And, in regard to the particular " circumstances attending this case, do agree to report that the said John Gasnier is an object " of compassion, and that it may be advisable for your Excellencys to grant him His Majesty's " Royal Pardon for the said offence so far as relates to his life, but not to his liberty."

" Their Excellencys the Lords Justices in Council this day took the said Report into considera- tion, and, approving thereof, are hereby pleased, in regard to the particular circumstances of this case, to extend His Majesty's mercy and compassion to the said John Gasnier, and to grant him his Majesty's Pardon for his said offence so far as relates to his life, but not to his liberty. And to that end their Excellencys do hereby order that no further proceedings be had against the said John Gasnier, and that he be forthwith discharged from prison. But that, notwith- standing this, the said Gasnier be put under a proper restraint or confinement to prevent his doing further mischief. Whereof the Bailiff and Jurats of His Majesty's Royal Court of Jersey and and all others whom it may concern are to take notice and govern themselves accordingly.

(Signed) JA. VERNON."

2521. The proceedings in that case are stayed; and then there is a recommendation to mercy?—Yes.

2522. What is the meaning of a recommendation to mercy of a person who is not in the power of the Crown at all, from not having been found Guilty?—It is rather to stay proceedings.

2523. Mr. *Dupré.* This is the Act of Court in that case; upon which the proceedings before the Privy Council are founded.

*The same was read as follows.*

" *Oct.* 5. 1742. Continuation des dits Plaids.—Par devant Phle. Le Geyt Esc^r^, Lieuten^t^ de Monseig^r^ le Bailly de l'Isle de Jersey, assisté de Guill^e^ Dumaresq, Michell Lemp^re^, David Patriarche, Phle. Le Geyt, Elie Dumaresq, Jean Hardy, Jean Hamtonne et Jean Poingdestre, Esc^rs^, Jurats.

Jean Dumaresq Gent, Con^ble^ de la pōe de S^t^ Ouen, Mr. Edo. le Montais centen^r^, Mr. Ph. Jean fils Jean, Mr. Jean le Vesconte, jun^r^., Mr. Elie Ricard, Mr. Jean Hubert, Mr. Jean Le Cornu, Mr. Tho. Robert, Mr. Ph. Perrée, Mr. Ph. Vibert, Mr. Edo. le Feuvre, Mr. Jean Bailhache et Mr. Paul Guille, étant appelés par le Proc^r^ du Roi po^r^ passer en qualité d'homes d'enditement à la charge ou descharge de Jean Gasnier, prisonn^r^ à la Barre, sous accusation d'avoir malicieusem^t^ et de propos délibéré, etc., sans aucune provocation causé la mort à M^e^ Nicolas Le Marquand, son beaupère, par lui avoir deschargé par dessus une muraille, par haine et malice, un coup de fusil dans l'estomach et dans le visage, par quel coup de fusil le dit Le

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Crime Transmis au Roi et au Conseil.

Marquand auroit receu trente sept blessueres, de gros et menu plomb, pendant que le dit Le Marquand étoit à travailler avec Phle. le Ruez, son valet, dans une certaine pièce de terre appartenante au dit Le Marquand, située en la contrée de L'Estac, ꝑoe de St. Ouen.

Après avoir cejourd'hui entendu lecture de témoignages qui ont été pris dans le cours de la procédeure, avec les conclusions du Proc$^{r}$ du Roy, et s'agissant que l'enditem$^{t}$ allast en particulier consulter entr' eux po$^{r}$ ensuitte faire leur Rapport à la Justice, la Cour, prenant en considération l'estat du dit Gasnier, et les difficultés qui se remontrent, sçavoir si les gens d'enditement doivent prendre cognoissance dans leur Rapport du desrangem$^{t}$ du dit Gasnier, ou seulem$^{t}$ parler sur le fait, dont il est accusé, Mess$^{rs}$ de justice, au nombre de huit assistants, s'étant trouvés partagés dans leur sentiments, quatre étant d'opinion de transmettre la procédeure à Sa Très Excell$^{te}$ Majesté et aux Très Hon$^{bles}$ Seig$^{nrs}$ de son Conseil Privé, et les quatre autres étant d'opinion d'entendre l'enditement, il a été jugé, par la ballance de Mons$^{r}$ le Lieuten$^{t}$ Bailly, que la procédeure et toutes les pièces qui en dépendent seront incessamment transmises à Sa dite Très Excell$^{te}$ Majesté et aux Très Hon$^{bles}$ Seig$^{rs}$ de Son Conseil Privé, afin que leur bon plaisir soit cogneu làdessus. Et entre temps le dit Gasnier est renvoyé en prison cõme devant, po$^{r}$ y estre détenu, les fers aux jambes et aux mains: ins$^{tce}$ du Proc$^{r}$ du Roy."

2524. Then the recital in the order of Council is incorrect?—Quite so, according to the Act of Court. There were eight Jurats, who were divided in opinion; four were of opinion to send the case before His Majesty in Council, the other four to refer to the enditement. The Lieutenant Bailiff gave his voice for a reference to the King in Council.

2525. Your view is that that is not a regular course of proceeding, according to modern practice?—No.

2526. (To Mr. *Marett.*) Is there any law in the Island which, after a person has been acquitted of a crime on the ground of insanity, enables the public to put him under restraint in order that he may not commit a crime again?—No; the ordinary mode is to deliver him over to a curator. The Procureur Général is supposed in some measure to be *ex officio* the guardian of all insane persons; and the curator is under his surveillance. I think the only mode of proceeding here would be to appoint a curator and deliver him over to the curator, and that the Procureur Général would be bound to see that the curator put him in a proper place.

2527. You think that the Executive, in the character of punisher of criminals, has no longer anything to do with him?—No. It is suggested to me to mention that, when a guardian is appointed, it is at the suit of the Procureur Général. The guardian is responsible to his electors for the property, and to the Procureur Général for the person.

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Mr. *François Godfray* (*Advocate*) further examined.

Mr. François Godfray.

2528. You wish to refer the Commissioners to a passage in the Coustumier as to non-age?—The following is the passage to which I refer. It is to be found at chap. lxxv. De Suite d' Assault, f. 97.—" Len doibt scavoir que se aulcun qui est en noãage est appelle de ses mẽbres, il doibt estre garde tant qu'il soit venu en aage ou estre baille en garde: sicomme il plaira à la justice, et sicomme elle verra que la chose le requiert." This is the note upon it.—" Contre ce texte on peut ainsi arguer. Se ung soubzaage cõettoit ung crime capital on ne pourroit asseoir punition capitale sur luy: comme il peult apparoir par l'usage sur ce notoirement gardé. Et la raison est pour le petit sens qui est en eulx qui les excuse de estre punys capitalement. Est ainsi s'ensuit que on ne peut faire suyte de gaige contre ung soubzaage, neantmoins qu'il ait cõis crime capital. Et oultre se on ne le peut suyr de gaige le temps pendant de son soubzaage il s'ensuit que on ne le pourroit suyr, luy venu en aage: et que la cause qui empesche la punition capitale a aussi bien lieu comme s'il estoit en aage: et par consequent appert le texte faulx. A l'argument on peut respondre que se ung soubzaage cõettoit ung crime capital, luy estant en moindre aage que de quatorze ans, il n'en seroit point puny capitalement, et ne le pourroit on suyr de gaige luy venu en aage: et de ceulx procederoit bien l'argument. Mais s'il estoit au dessus de l'aage de quatorze ans, pourveu qu'il fust abille de ses sens, il en seroit puny capitalement s'il confessoit: car il est es ans de discretion quant à ce, et pourroit testamẽter et porter tesmoingnage en tel aage. Et en a l'en veu plusieurs cõdemner à mort. Toutesfois doibt justice avoir regard en faisant la condemnation à l'abillité de leur sens: car, s'ilz n'estoient suffisanz et abilles de leur sens, on ne les debueroit pas condemner, nonobstant l'aage."

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*Thomas Le Breton,* Esquire, further examined.

Thomas Le Breton, Esq.

2529. In reference to the fifth question of the second series, the Commissioners wish to know, supposing by any inaccuracy in the Report you had simply charged a person with having committed the actual offence and had not included the having participated in it, upon the evidence proving a participation, what would follow?—The form of drawing those accusations is always the same. We always accuse them of having committed the crime, or having aided and assisted, whatever the evidence may be, because we do not know what the evidence will bear out.

2530. Participation, if it were found by the enditement or the grande enquête to have really taken place, might take place at a distance?—Yes.

2531. The distance would simply be an element in ascertaining the fact?—Exactly.

2532. Does the Court possess an Admiralty jurisdiction?—It does possess an Admiralty jurisdiction.

2533. Is it a jurisdiction derived from any particular statute or grant of the Crown, or is it

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involved in the general criminal jurisdiction instituted by the constitutions of King John?—I conceive so. I know of no particular law or statute which establishes it.

2534. In matters of crime, what is the extent of it?—I should think it extends no further than within the usual jurisdiction of the Island.

2535. What do you consider to be the usual jurisdiction of the Island?—I should think, if a crime were committed in the bays or creeks of the Island, or upon any small rock or island which had always been considered as forming part of this Island, such as the Echreho.

2536. Supposing a crime is committed on the High Seas upon a vessel belonging to one of the inhabitants of Jersey, would that be within the jurisdiction of the Court?—If they came into Jersey. I know of no such instance.

2537. Mr. *Hammond.*—Yes; there was one case of a captain of a vessel who was accused of murder upon his return.

2538. Mr. *Le Breton.*—There is a case of Captain Waller, who was tried here for the murder of a young boy, who died here in consequence of the ill treatment he had received during the voyage from the West Indies.

2539. In that case the death took place here?—It did.

2540. Was that a Jersey ship?—No; it was an English ship.

2541. Do you think that the death occurring in the Island made any difference in that case, to give the Court jurisdiction over the crime?—I was not Crown officer at that time. I defended Captain Waller; but the person dying here I think put all doubt out of the question.

2542. Supposing on board a British registered ship, a ship of the port of London, a man were murdered, and they put in here?—I should think they would be amenable to the Court here.

2543. Though he died in the middle of the Atlantic?—Yes.

2544. Are the Commissioners right in supposing that you think there is no distinction whether the ship is a Jersey vessel or not?—None.

2545. Would it make any difference if the murder were committed on board a French ship upon a native of Jersey?—I should think not.

2546. (To Mr. *Dupré.*) Do you coincide with the Attorney General upon those points?—I do not think our charters or the constitution give the Royal Court in such a case a power over any other persons but those who may be considered as inhabitants or attached to the Island, persons who are justiciables. The charters of the two Charleses and Elizabeth go rather beyond the constitutions of King John; they give power to the Court to try all matters arising within the Island, or in which one of the parties is a Jerseyman.

2547. Mr. *Charles De Ste. Croix.* The following is an extract of an Order in Council of the 22nd of June, 1565. "Their Lordships accordingly thereunto thought good to order that from henceforth all suits commenced between any subjects of the said isles shall be heard, ordered and adjudged in the same isles, and not within this realm; and the like order their Lordships determined should be kept in suits arising and concerning two parties whereof the one is resident here in England and the other in the said isles."

2548. Mr. *Dupré.* I conclude, therefore, that any crime committed in a Jersey ship on the high seas by or against a Jerseyman would be tried before the Royal Court; but I doubt whether a crime committed in an English or a French ship on the High Seas could be prosecuted here.

2549. If a person upon whom the crime were committed were a Jerseyman, would that make any difference?—I think it would.

2550. You register your ships here as of the port, do you not?—Yes.

2551. If a ship were registered of the port of Jersey, would a service on board such a ship give a man quasi citizenship for the time?—I consider that it would.

2552. You think that the ship carries its country with it?—Yes.

2553. Should you say that a passage on board would do the same?—I consider that it would likewise.

2554. The definition which the Commissioners have received from the Bailiff and the Bench is that the distinction between "crimes" and "délits" consists entirely in the punishment?—There is no classification by any law here as to the higher offences mentioned in Rouillé.

2555. "Crimes" and "délits" are not strictly words of art, you think?—No; délits are smaller crimes.

2556. (To Mr. *Hammond.*) Strictly, do you think that there is any technical classification of crimes here such as into crimes and délits?—I am guided in my answer on that subject by the fact that they are denominated by particular names, frequently in the proceedings before the Court. I should consider that "délit" comes near to the English term of misdemeanour. When I spoke of crimes, I should say that I consider crimes or felony involve all those in which the punishment includes forfeiture of the property of a convicted felon.

2557. Is there any distinct enactment, or any distinct laying down of the rule, by the Coustumier, as to the forfeiture of goods?—(Mr. *Dupré.*) Yes; under the title of "forfaictures."

2558. (To Mr. *Le Breton.*) With respect to the limitation of prosecutions for crimes, the limitation is stated as a year and a day for particular proceedings. For the crime of felony is there any limitation at all?—Twenty years has been stated as the limitation: but I do not know whether it is very clearly established.

2559. Mr. *Dupré.* I find this in the Coustumier, as to the limitation of twenty years. "Len doibt scavoir q̃ aulcun ne peut suyr de mesfaict qui dedès lan et le jour ne ait este mõstre à la justice, et de quoy la clameur n'ait este faicte sicomme elle doibt. Mais de meurdre peut on suyr quand certain signe et enseignes en sont monstrées par loyal tesmoignage du pays par qui len sache certainement du meurdre qui a este faict."

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2560. Mr. *Hammond.* This is what Terrien says upon the subject, commenting the passage just read from the Coustumier. Lib. xii. c. 18, p. 502. "Plainte d'excez et mal façons de corps se doit faire dedans l'an et jour du délict. Mais suite d'homicide et d'autre crime publique, ne se prescrit que par le laps de vingt ans comme il est dit de crime de faux."

2561. (To Mr. *Le Breton.*) All the evidence which is given in criminal cases must be given, we have heard, under the sanction of the oath of the witness. We have been referred to a statute which has lately been passed by the States, embodying the provision of our laws substituting the affirmation of Quakers and other Dissenters in lieu of the oath which was formerly taken?—That has not been confirmed by Her Majesty in Council; but there is such an Act, dated in 1842. The following is the Act referred to.

(*The same was read.**)

The Act of the States relative to the above projet de loi is as follows. "Les Etats ont chargé le Greffier de transmettre au Clerk in attendance du Conseil privé de Sa Majesté l'Acte relatif aux Quakers et aux Moraves, passé par eux aujourd'hui, et d'en solliciter la confirmation par Sa Très Excellente Majesté en Conseil. Un projet d'Acte relatif à l'Acte du Parlement qui ordonne la substitution dans certains cas des déclarations et des affirmations aux sermens ayant été présenté aux Etats, les Etats ont ordonné qu'il demeurera logé au Greffe, et l'ont reféré au Comité chargé par Acte du 19e Janvier, 1842, de reviser les réglemens logés au Greffe à cet égard, afin qu'il le prenne en considération, y apporte telles modifications qu'il jugera nécessaires, et fasse son rapport sans délai."

2562. Sir *John De Veulle.* It was transmitted; and we have applied two or three times, but could never get it confirmed. Every person here is obliged to perform military duty; and I believe it was thought some difficulty would arise upon that subject.

2563. (To Mr. *Le Breton.*) What are the crimes that render a person infamous?—A capital conviction, or any conviction which would entail confiscation, which would include capital offences or having been found guilty of perjury.

2564. The pillory was a mode of punishment here, was not it?—Yes.

2565. Would a condemnation to the pillory, and suffering that punishment, have the consequence of rendering a person incompetent as a witness?—I should think so, and particularly as formerly the pillory was very generally accompanied with the cutting off the end of the ear.

2566. (To Mr. *F. Godfray,* Advocate.) Do you think that there has been any difference as to whether a person had actually undergone the punishment or not?—There have been some who have been heard after the punishment was over.

2567. (To Mr. *Le Breton.*) What do you take to be the law upon that subject? Do you think that having suffered the punishment would restore the competency?—I should think they might be heard in a case of murder. The Court would of course consider how far weight was to be attached to their testimony. I do not think any disallowance ought to be made in a case of murder.

2568. You think that any person would be allowed to be heard in a case of murder?—I should think so.

2569. Do you think that having suffered the punishment relieves from the disqualifying infamy?—I do not know a case. No law is laid down here on the subject, that I am aware of.

2570. Mr. *Hammond.* I do not agree in the view that a person having suffered the punishment would restore his competency. I recollect, in a recent case, having objected to a party as having suffered punishment; and I recollect that Mr. Solicitor General adverted to certain enactments. I am pretty certain that it is alluded to in the Act of Parliament; and I believe it was in consequence of that that it was included in the Act of the States.

2571. What is the direct proof of the conviction?—By producing the judgment of the Act in Court.

2572. And identifying the party?—Yes; they are generally so well known here, that it is not necessary to call witnesses.

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*J. W. Dupré,* Esq., further examined.

J. W. Dupré, Esq.

2573. Does anything of this sort ever take place? Supposing two parties were joined in an accusation, and the evidence appeared totally to fail as to one when it came to be read, does it never happen that the counsel for that prisoner says, "I ask the opinion of the Court whether this prisoner may not immediately be acquitted, in order that his evidence may be given for the other party?"—I conceive, if two parties were charged with the same offence, and no evidence appeared against one of the parties, that the Attorney General might abandon the prosecution against that party, against whom no evidence could be brought, and that he might then be admitted as an informateur.

2574. Is the Procureur Général's consent necessary? Could not the counsel for the prisoner put it to the discretion of the Court?—I think the party could.

2575. And the Court might direct the Procureur Général to abandon the case against one of the prisoners?—Yes, I think the Court would have that power.

2576. Have they the power to say to the jury, "the man must be instantly acquitted?"—The Court might, having the evidence before them, declare that there was not sufficient evidence to send the case to the jury; and then they might make the party competent to be a witness.

2577. After the enditement is in Court?—No; I should think not. The witnesses have all been heard before the enditement. If there is no evidence against one of the parties, the Attorney General would most likely abandon it; or, if the parties were to ask that one prisoner

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* See page 93, *Note.*

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against whom no evidence had been produced should be heard, the Court would decide before the case was sent to a jury.

2578. *Mr. Hammond.* Supposing I were counsel for two parties so accused, and I considered that no evidence was given respecting one, but that I might make him an important witness for the other, if the public prosecutor would not abandon the case, I do not think the Court could exactly acquit him; but I think the counsel might ask that that person's case might be brought separately before the enditement, that he might be acquitted.

2579. Mr. *Dupré.* I have never seen a case before the enditement, when two were accused together, and tried separately.

2580. Mr. *Hammond.* This is before the enditement is convened. I know nothing in our practice which would prevent my moving the Court to have his case tried separately to the benefit of the other, if there were no abandonment.

2581. Mr. *Dupré.* Where an accusation is laid against two parties for the same offence, I look upon it that, unless one is abandoned, you could not have a separate trial for the other. The case must come before the jury entire.

2582. You think that the Court could direct the Procureur Général to abandon the case, if there were no evidence at all against one of the parties?—I conceive the Court would do so, particularly if it appeared that he was brought in merely to prevent his giving evidence in a case where he was not an offender.

2583. Mr. *Hammond.* I doubt whether the Court would assume that power. If it is a case to go before the jury, the Court are not judges of the fact; but they would constitute themselves judges of the fact at once in that case.

2584. (To Mr. *Dupré.*) Can the defendant be heard by himself or his counsel to argue against any particular person being admitted as evidence for the Crown?—Yes; the counsel may argue it, and the Court would decide between the two. No accused party can be admitted as King's evidence except with the sanction of the Court.

2585. And that sanction may be a matter of discussion?—Yes.

2586. The counsel for the other prisoners would have a right to be heard against the admission of one of the prisoners as King's evidence?—Yes.

2587. With respect to the tenth question of the third series, where there is evidence for the Crown given by an accomplice, the Commissioners have inquired whether it is necessary that the testimony should be confirmed. Several gentlemen, who have answered us, have misunderstood the question. We did not mean, whether the weight to be given to the testimony would be increased by the confirmation, but whether, if that were the only evidence, the Court would direct the abandonment of the prosecution?—No; the Court would not withdraw the case from the jury.

2588. The enditement might convict, therefore, though there were no other witness?—Exactly; though it is not likely.

2589. What is the existing law with regard to incompetency which arises from the consanguinity of the witness to the party accused?—The relation of a party accused, within the degree of uncle, nephew, aunt or niece, would be an incompetent witness either for or against the accused, except where the crime had been committed in the family, and there were no other witnesses present or who had knowledge of the fact.

2590. Has there been any proposition before the States to alter the law in that respect?—The law has been recently altered.

2591. That was the old law, was it?—By the old law, no relation within the degrees I have mentioned could be heard at all under any circumstances. But recently an Act of the States was passed, changing the old law.

2592. What is the date of it?—The 14th of December, 1842.

2593. The exception goes still further in the old Norman law, and extends to cousins, does not it?—Yes; but we have never admitted that portion of the Norman law.

2594. Do you think that the law with regard to the exclusion of witnesses within the degree of cousins went further than witnesses who were called witnesses "de crédence?"—I think it goes further than that.

2595. This recent law excludes parties from being witnesses, if any other evidence can be produced. Do you agree in the propriety of making a law of that kind. Would not it have been better to have admitted them generally in all cases?—I thought it would, at the time the law was passed.

2596. Do you see any reason for the exclusion?—I do not.

2597. Mr. *Hammond.* There is this further anomaly also. It only lets in witnesses as informateurs, not as witnesses for the defence.

2598. (To Mr. *Dupré.*) Do you agree that that is the effect of the law?—Yes.

2599. Do you think that also a defect?—I think so. I think we extend the incompetency much too far.

2600. If one brother sees the commencement of an affray which ends in the death of another brother, and a third sees the death, the proof in conviction could be heard, but not the proof in defence?—Just so.

2601. There is another limitation also, that the offence must have occurred in the bosom of the family?—Yes; which is a limitation I do not exactly understand.

2602. What do you think is the legal construction of the phrase "in the bosom of the family?"—I cannot exactly say how it would be interpreted. I should think it meant in the house where the parties were living, among the family only.

2603. An uncle committing an offence upon his niece, would that be in the bosom of the family?—It would be so interpreted, I imagine. It is a very loose term.

2604. (To Mr. *Dupré.*) The 15th question is, "If such statements have been made by the party charged under the influence of a promise or threat, does this render them inadmissible in evidence?"—I think the evidence would not be received.

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2605. From whom is it necessary that the promise or threat should proceed in order to constitute the exclusion? An indifferent person promising or threatening would not exclude the evidence, would it?—It is supposed to be some person having power or authority to execute the threat, or to perform the promise.

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John Hammond, Esq.

*John Hammond,* Esq., further examined.

2606. The Commissioners understand, by the answer to the 16th Question, that the party may give evidence of his innocence in every case where he has not pleaded Guilty?—Yes.

2607. What people have access to a party charged, when he is in prison?—The police officers, before he is brought up, have access to him. I do not know what regulations there may be exactly, by the Prison Board.

2608. Sir *John De Veulle.* All the members of the Prison Board have constant access, of course, and the gaoler and the other officers of the prison: but no one else, without a written order from one of the members of the Board.

2609. Do you recollect any cases in which evidence of the declaration of the prisoner has been given by the gaoler, or officer, or policeman?—That is frequently done.

2610. By whom is the evidence given?—Both by the police officer, and also by the gaoler, if he has been present when the prisoner has made the declaration.

2611. Do you know any instance of control being exercised, or of a rebuke being administered to a police officer for questioning a prisoner?—I cannot say that I remember anything of the kind. It may have been done.

2612. Mr. *Hammond.* That has been of very frequent occurrence here; and I think it is to be deprecated.

2613. Of course the Court always check it?—I do not think that it has been checked. The reason which has been given by the police officers often is, that, supposing there is reason to believe there were participators in the crime, it is desirable to try to obtain some clue to the apprehension of those persons.

2614. By questioning the prisoners?—Yes.

2616. (To Mr. *Le Sueur.*) Can you tell the Commissioners what is the practice upon that subject?—Our law and practice is quite different from the English law. The Police have always been in the habit of putting questions to prisoners relative to the offence with which they are charged; and the admission of the prisoner has always been received by the Court, provided no improper means have been resorted to to obtain it from the prisoner, provided it was a free admission. I believe that, by referring to the Reports which have been presented by the different constables, such admissions are generally mentioned in the Reports. At the same time, I must mention that I do not believe that the admission of the prisoner alone would be considered a sufficient proof of his guilt by the jury, if it were not corroborated by some other evidence.

2617. Of course, if you require two witnesses it would not?—We do not now, in our practice, require two witnesses. I could mention that Mr. Chevalier on one occasion has been accused of having trepanned prisoners into an admission of their guilt, and especially a man of the name of Noon. I do not suppose that centenier Chevalier ever saw the man while he was in gaol.

2618. Of course trepanning a prisoner would be contrary to law; but your practice is to question him, is not it?—Yes, and to ask them to account for their being present at such a place, or how they account for being absent from their home; but, of course, any admission given under a promise would be immediately rejected by the Court.

2619. Whether it would be considered to have been given under a promise or not, would, of course, depend upon what the police officer might say?—Yes.

2620. Would this rule in practice be confined to the constable, properly so called, and the centeniers, or would it extend to every officier de connétable?—More especially to the constable and centeniers, though in some cases admissions made to police officers have been received by the Court.

2621. Mr. *Hammond.* I think we may say that police officers are heard as generally as other members of the police.

2622. (To Mr. *F. Godfray,* Advocate.) With respect to the practice of allowing policemen to question prisoners and producing afterwards the answers they give in evidence, what do you say?—I think it is one of the greatest abuses which have been introduced very lately.

2623. It does exist, does it?—It does exist; that is, by "existing" I must be understood to mean that it is sometimes practised; for I have never done it, and I should consider it a dereliction of my duty if I had. Oftentimes a prisoner denies in a very strenuous manner what has been stated by the party who has been questioning him in gaol, or he states that some promise or threat has been held out to him.

2624. It then rests with the policeman who has questioned him to say whether he did promise or threaten him?—If there are no other witnesses it must necessarily rest with him.

2625. You think it is a modern practice, do you?—I never heard that it was practised before I was constable in the town; and it never was practised while I was constable.

2626. Mr. *Le Sueur.* I think, if you refer to the Reports of constables, you will see there are admissions made by prisoners, and that they have been always received. In the case of Noon, which I have cited, I went to the prison, after the verdict of the inquest. I put no question to Noon about his culpability; but, in the evening, when I put him in gaol, I did not know whether he was quite sober. I went to tell him that such an inquest had taken place, and that they had given such a verdict. The gaoler and two police officers were then present.

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2627. (To Sir *John De Veulle.*) In the case of an instrument attested by witnesses, can it be read unless the witnesses are produced?—Perhaps the witnesses may be out of the Island.

2628. If there is no good cause for their non-production, would the Court allow the instrument to be read?—I think not, if it were insisted upon by the other side.

2629. Do you apply that to all the attesting witnesses?—To one, at any rate.

2630. Should you exclude an instrument from being produced in all cases where it was not registered? Supposing, for instance, the case of two parties indicted for a conspiracy, where they have a contract between them, which of course they would not register?—In that case I do not think the Court would refuse it.

2631. It would be admissible in evidence, not to prove the contract, but to prove the fact of the crime?—Yes.

2632. Acts of Court, of course, are produced from the registry?—Acts of Court are signed by the Greffier, and of course prove themselves.

2633. Is the exemplification evidence without its being produced by the proper officer?—Yes.

2634. Supposing a question as to a parish rate, must you produce the parish books?—They would be produced and proved by the parish constable.

2635. Would you admit a copy?—They generally produce the books; but, if a copy were signed by the constable, it would be admitted I think.

2636. Would that be on the ground that the constable was a public officer?—Yes.

2637. (To Mr. *Hammond.*) The 17th question is, "Is the examination of a witness, whether against or in favour of the party accused, confined to those facts which the witness knows of his own knowledge? Or may he be examined as to what he has learned touching the matter in dispute from declarations, written or oral, of third parties?" The answer made by all the gentlemen is, that the witness must give evidence upon things which he has seen and heard himself. Is hearsay altogether excluded from the consideration of the Court, or is it admitted to be given, being stated not to be evidence?—I consider that it is not admissible at all, strictly speaking; but it is equally true that sometimes it is admitted to be given to connect facts which an individual knows, where it is scarcely possible to have a clear statement without his referring to those matters which are, so to speak, a link in his evidence, and where it would be very difficult to expunge them altogether. But hearsay evidence is no evidence in itself at all.

2638. That is, no evidence of the truth of the thing told to the party?—If the person were to commence by saying he has heard such a thing, it is rejected in toto. It would not be evidence of the fact at all.

2639. If the witness said, "John Brown told me that the prisoner was stealing my wood, and I went to his house, and found him," you would strike out the first part, and say, "in consequence of something which was told me, I went to his house?"—Yes.

2640. If by chance, in one of those depositions taken by an écrivain, hearsay evidence were to creep in by the negligence of the parties, could that evidence be objected to at any time after it had been written?—At any time it could be objected to: and, in pleading before the enditement, the counsel could also make the remark that, though part of the evidence, it was not legal evidence.

2641. Mr. *Dupré.* He could not have it expunged after it was signed.

2642. Mr. *Hammond.* I think, if the party were brought forward again, the question might be raised in the presence of the witness, if he were heard in two or three days. The deposition is read to him again; and he has to corroborate that which he said on the previous day; and, if there were any thing of that kind in it, the counsel for the prisoner would have a right to moot the question, because it is read before all the parties and he might raise that question and ask the judgment of the Court upon it.

2643. Do I perfectly understand you, that, a witness being recalled, the first proceeding is that some officer of the Court reads to him all his prior examination?—Yes.

2644. Then he is questioned as to the new matter?—Yes.

2645. You think that, at the time he is called up a second time, the Court might order a passage to be struck out from the first evidence he has given?—Yes, upon the objection being taken. The question may be put to the witness whether he confirms that; and he may add to or explain what he has stated before; and there may be many changes made. A witness is called, for instance, upon one day; he gives his evidence; that evidence is closed for that day; and he signs it. He is brought up a second or a third day; and, when this is read to him, that witness has a perfect right to change it in this way, "I meant to say so and so."

2646. Can the Court order particular expressions in a deposition which has been signed by a party to be struck out, on the objection of counsel that they are hearsay?—I consider that it may, while the witness is before the Court.

2647. Supposing a trial before the enditement. The enditement convict. In the mean time, before the period at which the case is submitted to the next tribunal, the counsel for the prisoner, conning the thing over, sees that there is a great deal of hearsay evidence. Could he apply to the Court to have it struck out?—No, I think not then; but he could always remark to the jury upon that which he considers to be hearsay evidence, and that which is direct evidence.

2648. Must not the Report of the constable be hearsay?—Yes.

2649. Mr. *Marett.* I believe there never has been an instance of any evidence once signed being altered or expunged in any way.

2650. Mr. *Dupré.* No change can be made in a deposition which has been written after the witness has signed it, and has left the Court. If the écrivain writes an answer to a question, and the advocate objects to it as hearsay evidence, it may be struck out before the witness signs it; but no evidence can be altered after the witness has signed it.

2651. In that case, it could only be withdrawn from the consideration of the jury by the counsel or the Court calling their attention to particular passages, which they ought not to take notice of because they are not evidence.

2653. Mr. *Hammond.* That is the way I would expunge it virtually. I do not say the pen would be drawn across it; but, suppose that it is hearsay, and it comes to the knowledge of the counsel, he would put the question, "is not that which you have declared derived from such a source?" and he must answer to that. We do not obliterate the former evidence; but we shew that it is not evidence by asking the witness as to the source from which he obtained the evidence. Supposing a witness is asked, on the second occasion, "do you confirm your evidence?", he may upon that say, "I confirm it, except so far, that so and so is incorrect;" or, "It is not as I have stated it." The other is not obliterated; but the subsequent declaration in fact virtually expunges the other, though both are before the Court.

2654. In a case like that, would that have the effect of withdrawing the evidence from the enditement?—No, not of withdrawing it, but of paralyzing the effect of it. In fact, if a person makes a statement on his first examination, and, between that and the second examination, the counsel for the defence discovers that the statement has been a representation of something told to the witness, he would put the question, "Was not what you said the other day what was told you?" The witness would answer, "Yes." That would get rid of the effect of the previous statement, to some extent.

2655. Would that be withdrawn from the enditement?—No.

2656. Would not it depend upon the discrimination of the enditement whether they took the evidence as hearsay or not?—What would be pressed upon them would be the subsequent declaration; but both would be put before them.

2657. Mr. *Marett.* When an error is made and retracted, both the error and retraction are read before the jury.

2658. (To Mr. *Hammond.*) With regard to dying declarations being received, to what is that confined?—I should think it would be only in the case of homicide.

2659. Do you confine it to the dying declaration of a person murdered?—Yes. Then, of course, we must receive hearsay evidence, that is of those persons who can come and testify that such was the statement of the person dying.

2660. (To Mr. *Dupré.*) Do you agree in that?—I do.

2661. So that the fact, that an ordinary witness was dying and made a delaration in that state, would not make that declaration evidence?—Not unless it were heard before the Vicomte. If a witness was so ill as not to be able to appear before the Court, the only remedy would be to have an officer of the Court to hear that evidence; and then it would be perfectly valid, if taken in the presence of the prisoner.

2662. (To Sir *John De Veulle.*) Of course, when parties are confined on any charge of crime, an order to see them is never refused to their counsel or legal advisers?—No: the article of the prison regulations says that the legal advisers may be admitted at all times.

2663. Without any other person being by him?—Yes; all possible facilities of that kind are given.

2664. The Commissioners observe that all the gentlemen consider that evidence as to the character of the accused may be given for and against him at all stages of the case.

2665. Mr. *Hammond.* I do not know that it could be given against him. I do not know any case in my practice where that has been done; because a party charged would be before the Court on the particular accusation; and therefore I should consider it extraneous, and oppose it.

2666. You think you could not give evidence of the bad character of a prisoner in proof of his guilt?—No, any more than committing one offence necessarily makes him guilty of the charge before the Court.

2667. You say that particular acts of good conduct may be given in evidence?—My meaning is that we are allowed to bring forward specific facts.

2668. Can evidence be gone into to disprove a particular act of that kind?—Yes. The Crown has a perfect right to rebut the evidence.

2669. Supposing a man were indicted for murder, to show his humane conduct you may prove that he had rescued some person?—Yes.

2670. That might raise a collateral issue, therefore?—Certainly the Crown might call witnesses to contradict it.

2671. And evidence of his previous character might be brought to support that again?—Yes.

2672. You appear to agree that evidence can be given of the bad or good character of a witness, and that there you may introduce particular facts again?—I consider that the prisoner has a right to impugn the character of a witness.

2673. By proof of particular facts?—Yes; but I think, in general, he ought to state specifically his objection to the witness when he is called: at least that that would be the safer way.

2674. That would be on both sides, would not it. The Attorney General might produce evidence that a witness for the prisoner was a man of bad character?—Not as an objection to his evidence, but as to the credit to be given to him. I cannot recollect, in my practice, that the Procureur Général has had recourse to that.

2675. You all agree that you may impeach a witness for the prosecution, at all events, by proving some particular fact against him. The other side, of course, are entitled to rebut that?—Yes.

2676. Then, if they do so, they may do so by proving that the witnesses who have proved that second fact are themselves unworthy of credit?—I suppose so.

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2676. Is there any limit to that divergence from the main issue?—Wherever the parties saw it was of use, they would continue it, no doubt. Evidence is brought for or against the charge. The scope of the evidence to which I allude would be to shew that there is not evidence, or at any rate that it is doubtful evidence, and is not to be trusted.

2677. Would not that be a trial of so many distinct questions? I bring evidence to say that a witness should not be believed because he told a particular lie on a certain day. He would bring evidence to rebut that.—It would have no other effect than this, that, the evidence being brought before the enditement, they are to appreciate that evidence: then they are to see that which would go to impugn the evidence, and that which would go to support it.

2677. Must not this be the case, that the first question which the enditement must ask themselves is, "Is this witness to be believed?" To decide that question, they must try whether he told the lie or not. Then would come the next question; "Did the prisoner commit the fact or not?" That would be tried by the general evidence, from which the testimony of the witness would be excluded, or into which it would be introduced, according as they thought him worthy or unworthy of credit?—That would be according to the working of their own mind without any specific declaration on their part.

2678. Is not that an inconvenience which arises out of allowing a particular fact to be given in proof of the good or bad character of the witness?—The contrary course might tend to curtail the evidence: but I do not know that it would be a great advantage, practically.

2679. (To Mr. *Dupré.*) Do you agree with the rule that particular facts may be given to show the good or bad character of the witness?—I have never seen it done.

2680. You know no instance of it?—No.

2681. (To *Sir John De Veulle.*) The Bench tell us, in their answers, that the general rule is that two witnesses are necessary to establish a fact, but that the evidence of one credible witness, whose testimony is corroborated by extrinsic evidence, would be sufficient to establish a fact. What do you mean by the corroboration of a witness?—When we met, we discussed these questions together. I think instances were mentioned where, one person having sworn to a fact, and that being corroborated by some extrinsic matter, the evidence had been found sufficient, and the jury had convicted upon it.

2683. (To Mr. *Le Sueur.*) Do you think it is not any longer considered law that two witnesses are necessary?—I think not. Sometimes advocates may cite the old Norman Law upon that point; but it is not the practice.

2684. Mr. *F. Godfray* (Advocate). Wherever the States think that one witness will be sufficient evidence, or that two witnesses could not be easily produced, they enact that one credible witness shall be enough.

2685. Mr. *Le Sueur.* That provision has been left out in all recent Acts.

2686. (To Mr. *Hammond.*) Do you agree with Mr. Godfray, that two witnesses are always necessary?—I think that two witnesses must give evidence of the crime in order to convict the prisoner.

2687. Supposing a man were to say, "I saw the prisoner at the bar shoot another man through the head," and it were proved by another witness that the man had been seen with a gun, would that be sufficient?—I doubt it very much.

2688. Sir *John De Veulle.* Suppose I heard a noise in my house, and got up, and found a person in the house, and he ran away with a watch of mine, and was afterwards taken with the watch in his possession, I think the jury would convict him upon that.

2689. Mr. *Dupré.* I do not think there is any number of witnesses necessary for the establishment of a particular fact.

2690. I might be walking in the street; and a man might run up against me, and take my watch; I might pursue him and get it back. Would that be taken to be sufficient evidence?

2691. Mr. *Hammond.* The old rule is that the denial of a prisoner is equal to the statement of a single witness.

2692. (To Mr. *Dupré.*) Would you prosecute upon an information supported by the evidence of one witness?—No. In the case of Nicolle, there was one man saw the prisoner run from the direction in which the gun was fired towards the house. He was the only witness to that particular fact.

2693. Mr. *Le Sueur.* It was not my intention to say that, if there was only one witness to prove the death of a person, that would be sufficient evidence; but I think that it is not necessary to have two witnesses to the same fact.

2694. Why should not one witness be sufficient to prove the crime itself?—In that case, it would be very strange that one person only should be called to prove the death. When I said that we did not require two witnesses, I meant two witnesses to the same fact.

2695. Sir *John De Veulle.* There was an old man, whose name I have forgotten. Two men went into his house. They had been there before; and, when he saw them come in, he said, "You are come to finish me to-night." They beat him very much, and nearly murdered him, and stole some things. He was the only person to swear to their identity. They were convicted, and transported; and, on visiting Pentonville, I saw the very man in prison.

2696. Mr. *F. Godfray* (Advocate). There were other facts in corroboration of that; they had been met near the house. The Court would never say, "There is only one witness, and we must stop the case."

2697. If a criminal is charged with any offence here, and escapes to England, you cannot get any help from England, can you?—No; I think not.

2698. (To Mr. *Dupré.*) Can you state how that is?—We now make an exchange of prisoners, which we did not before. That is by a special law which has been registered here.

2699. (To Sir *John De Veulle*) Supposing a man escapes from Jersey to England, what could you do?—We could claim him. Formerly, in one case I remember, after the Bristol

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riots, several of them came here; and I could not give them up. But now the constable comes with a warrant from England; and I deliver them up.

2700. Mr. *Le Sueur.* Before the new Act of Parliament was passed, a burglary had been committed on a watchmaker here of the name of Woods. The persons went off to England with part of the stolen property. They were taken up in England, and brought back here by two officers.

2701. English policemen?—Yes.

2702. Have you any knowledge under what authority that was done?—The party who was robbed went over to England. One of the men confessed.

2703. Mr. *Hammond.* If the police officers in England had not thought proper to bring them over, I am not aware that we have any authority to take a prisoner in such a case.

2704. Sir *John De Veulle.* If a criminal escapes to Guernsey, we have no power to get him back at all.

2705. (To Mr. *Dupré.*) Do you consider the statement of Pipon and Durell an authority on which the Commissioners may generally rely?—In most cases.

2706. With respect to that and to the other statement of Hemery and Dumaresq, and also the statements and counter statements of the States and the Royal Court, may the Commissioners rely on the documents there set out as authorities?—I think they may.

2707. So with the charters?—Yes.

2708. (To Sir *John De Veulle.*) How is it with regard to an Englishman who has committed a crime in England, and is in this country? Supposing an application were made from England to have the person taken up for a crime committed in England?—Formerly, very often, the constable would come here; and I could not give up the person without an Order in Council. Now, by the new Act, the 6th and 7th of Victoria, chapter 34, constables have come, and I have given persons up.

2709. I understand you to say, that there is still the same difficulty with regard to criminals who escape from Jersey to Guernsey?—Yes.

2710. That difficulty is not cured at all?—No.

2711. (To Mr. *Hammond.*) What do you do when you want evidence from England?—I do not see that there is any help for it whatever.

2712. Nor vice versâ?—No.

[Adjourned to to-morrow, at half-past ten o'clock.]

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*Friday, 18th September,* 1846.

Sir John de Veulle.
18 September 1846.

Sir *John de Veulle* examined.

2713. The Commissioners understand that you have some statement which you wish to make to them.—I wish to make an observation with respect to what the Attorney General stated. I know he did not wish to cast any reflection upon me; but, from what he said, it might be supposed that I sometimes declined to appoint days for criminal cases. I must say that I never refuse to appoint days when I am asked. I appoint as many as I can, both in Term time and in Vacation, with regard to the general business. I should also state that I am obliged, as President of the Prison Board, to report to the Secretary of State for the Home Department the state of the prison; and that, whenever it happens that a prisoner has been more than two months in gaol without being tried, I am always obliged to give a reason why it has been so. It very seldom happens that a person is more than two months: but it has sometimes happened without our being able to help it. Mr. Le Breton will remember a case where the prisoner stated that he had a material witness in Newfoundland; he was kept in consequence six months in gaol, till the return of the witness; and, when he came, it was found, I believe, that he knew nothing material.

2714. Do not you think this Island is in want of some means of obtaining witnesses that are out of the Island?—It would be a very good thing if we had the means.

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*Thomas Le Breton, Esq.*, further examined.

Thomas Le Breton, Esq.

2715. The Commissioners were discussing, the other day, the law as to registering Acts of Council and Acts of Parliament. Their impression was, that there was an order of Council of 1806, stating that Acts of Parliament in which the Island is named were law, independently of any registration. It is a Guernsey Order, they find.—Yes. It is with regard to some revenue regulations.

2716. That, I presume, is law here now.—I should think so.

2717. Supposing the Act of Parliament mentioned "all Her Majesty's dominions, not being part of the United Kingdom," should you consider that those words included Jersey?—Yes.

2718. It would be law without registration?—Yes; but it is always registered.

2719. Should you think the words "all Her Majesty's dominions," without the words "not being part of the United Kingdom," would include Jersey?—I should doubt it.

2720. Acts of Parliament not naming the Island are considered not to be law till registered here?—No.

2721. Before you register an Act of Parliament not naming Jersey, do you always have an Order in Council?—I know very few cases: but I do not know of any Act of Parliament not naming the Island being registered.

2722. (To Sir *John De Veulle*). Do you agree with that?—Yes.

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2723. Mr. *Le Breton.* They are never registered without an Order in Council.

2724. With respect to Orders of Council, they generally carry in the body of them an order that they shall be registered, do not they?—They always do. The Commissioners will allow me to remark that, when an Act of Parliament in which the Islands are not named has been sent here for registration, the material provisions of the Act have generally been taken and made into a local Act, and then confirmed by Her Majesty in Council.

2725. Orders in Council are always registered, are not they?—Yes.

2726. Was not there a right claimed of suspending the registry of an Order in Council?—That claim exists.

2727. For what length of time do you claim that?—Till there has been an opportunity of making a representation to Her Majesty.

2728. Has not that been noticed in some Order in Council?—There was a censure in the case of my father when he was appointed Attorney General. That was for refusing to swear him in according to his Letters Patent.

2729. With respect to Local Acts, if passed for three years only, it is understood that they are law for that time without any order in Council?—Yes.

2730. Is there any limitation as to the subjects to which acts of that sort may apply?—No; there is no law limiting the legislation of the States upon any subject.

2731. Supposing an Act of the States passes which does not, on the face of it, bear that it is to last only for three years, does that last for three years without an Order of Council?—The enactment never mentions the time that it is to last: but any Act of the States not confirmed by the Council ceases to be law at the expiration of the three years.

2732. You make them occasionally perpetual by re-enacting them, do not you?—Yes.

2733. Toties quoties?—Yes.

2734. Are there any Acts which have been law in the Island for a long while in that way, by triennial renewals?—There are regulations as to taking away gravel and stone from parts of the Island, inflicting small penalties for taking gravel from the shore, regulations as to the boatmen and porters, and others as to matters of that kind.

2735. There is a Lottery Act, is not there?—I believe that has expired.

2736. How long did it last?—I believe it was renewed, with some modifications, once.

2737. (To the *Vicomte*). The précis of Orders in Council which you were good enough to put into our hands will show us the number of Orders in Council which have been made?—Yes, with a few exceptions, which were passed in London and not registered here.

2738. (To Mr. *Le Breton*). Am I right in supposing that no Act of the States becomes law, except by the consent of the Lieutenant Governor?—Yes.

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*François Godfray*, Esq., (Advocate) further examined.

François Godfray, Esq.

2739. Do you distinguish between robbery and larceny as we do in England?—Yes, though in the accusation it is always put vol.

2740. What is the distinction between the two?—One would be more severely punished than the other, if there were violence.

2741. Does violence constitute the difference between robbery and larceny?—Yes, as to the punishment.

2742. What is robbery?—Messrs. Pipon and Durell, as to robbery, state, at page 7 of their statement:—"Robbery, whether it be the taking from a person by violence, as on the highway or from his house, is punishable with death." Robbery was either entering violently into a house, or attacking a person and robbing him. Rouillé says:—"Je me plaing de B. qui en la paix de Dieu et du duc m'assaillit, et me batit, et me fist sang et playe, et me tollit ma chape en roberie: pourquoy il me convinst crier haro. Se lautre le nye mot a mot et il offre à soy defendre len doibt premierement faire enqueste du haro par ceulx enquel voysine il deust estre crie ou ceulx qui y furent presentz. Et se ils dyent et tesmoignent que ils ouyrent le haro de la roberie lors doibvent les gaiges de la battaille estre receuz en la maniere que nous avons dict."

2743. The cry of "haro" is discontinued in that case, is not it?—Yes; it does not apply now to criminal matters: it is disused altogether.

2744. Is there any enactment disusing it?—I am not aware of any. I do not think any person could be capitally punished if there were not great violence amounting to a wound. Roberie would be on the person.

2745. I understand you to say "robbery" is where a person either violently enters into a house and steals, or steals from the person?—Where you use the word "robbery," the word we use in the island now is "vol." Then it is defined how the "vol" has taken place; and, according to the circumstances, the person is judged. We have no such crime in Jersey now as robbery. The accusation would be vol; and the circumstances are aggravating circumstances, which would naturally increase the punishment. "Vol" depends upon how the accusation is framed; it is stated whether it is "vol" on the highway, whether it was "vol avec violence," "vol dans une maison habitée avec effraction," or "dans la nuit."

2746. The definition of roberie is a part of the ancient Coustumier which has gone?—Yes.

2747. Is the word "larcin" used as the designation of a crime?—No; it is called vol. I suppose, when Messrs. Pipon and Durell used the word, it was to be understood by the persons they wrote to.

2748. If the Commissioners were to report that the law as to robbery and larceny was regulated by the ancient Coustumier, they would be reporting untruly?—The Court for forty years has not put any one to death for "vol avec effraction."

2749. Would it be now law to do so?—I should think that, there having been no cases for for forty years, it would hardly be considered as law to put persons to death.

2750. Should you say it was an illegal punishment, if a man was hanged for robbing me and cutting my face?—It would not be called illegal, because the law would bear it out. The question would be, whether the Court would use a proper discretion in applying it after having been disused so long.

2751. Do you find in the ancient Coustumier anything authorizing the Court to mitigate the punishment from a capital one?—No.

2752. Do you find anything substantially authorizing the act of imprisonment?—As far as the records go, the Court has sometimes imprisoned persons.

2753. Do you find that authorized by the ancient Coustumier?—No, not for roberie.

2754. Is there any trace of the origin of that power?—None, except the practice.

2755. What is the ordinary punishment now for the crime of robbery with wounding?—Transportation.

2756. What is the authority for that?—There is no authority.

2757. Banishment, you think, is legal?—Yes: the Court has the right to inflict it.

2758. Is banishment recognized in the ancient Coustumier?—It is.

2759. Mr. *Dupré.* It is mentioned under the title of forfeitures, chapter 23: "Meuble est le chatel à ceulx qui sont damnez par jugement. En trois manières sont les hommes damnez en Normendie, si comme leurs dessertes le requierent: ou parce que les corps sont destruictz, si cõme de ceulx qui sont pendus ou ardz ou enfouys ou qui ont les yeulx crevez ou les pieds ou les poingz coupez: ou pour ce quilz sont forbãnis. Si cõme il appert des fuitifz qui sont accusez d'aulcun crime et defuyent quand ilz sont appellez à la paix au duc: tant quilz sont banniz par jugement de quoy nous dirons plus plainement tantost apres: ou pour ce quilz forjurent le pays. Si cõme il advient de ceulx qui sont fuytifz pour aulcun crime: ou qui sont en chartre: ou en lieux qui eschappent et senfuyent en leglise, ou ils embrassent vne croix. S'ilz forjurent le pays, ils forfont tout ce qu'ilz possidoient."

2760. Terrien is quoted by Pipon and Durrell in page 10. He appears to think that a "vol," which he there calls "larceny," though not in any one of the instances committed with aggravated circumstances, if committeed three times, would be subject to the punishment of death.—I see nothing in the books to show that a simple "vol" might be punished with death.

2761. You do not assent to the law as laid down by Pipon and Durrell in page 11?—I know of no instance in the records where a person has been hanged for a simple "vol."

2762. If the Court carried the sentence of death into effect, do you think it would be murder? It would, of course, if there were no law authorizing it.—I should say it was illegal.

2763. You think it would be technically a breach of the law to hang him?—I should think so.

2764. Have you any doubt that at one time in this country it would not have been a breach of the law to hang him?—I have no knowledge that there ever was a law authorizing a man to be hanged for it.

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Mr. *Hammond* further examined.

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2765. Mr. *Hammond.* Perhaps we might find, in that part of the Coustumier, something which might assist us as to punishment. We take the Coustumier as defining crimes; and we recognize the crimes so defined. The difficulty which appears is that it is laid down that certain crimes are to be punished in a certain way: but we do not follow the law as to the punishment of those crimes. Rouillé himself says: "Pour le déclaration de ceste question, len doibt scauoir que anciennement len souloit vser de punir vng malfaicteur en tel cas; de peine sembable au mesfaict qu'il avoit faict. Cestassavoir se aulcun crevoit vng oeil a vng aultre on luy crevoit vng oeil: et sil auoit coupe le poing à aulcun, on luy coupoit le poing: et ainsi es sembables cas et appelloit on celle peine ou loy Ad penam talionis. Mais len ne vse point pour le present de celle loy, car plusieurs punitions demeurent en tel cas en la raison et discretion de justice selon l'exigence des cas, et semble quil debueroit estre pillorie ou puny par longue prison, et par grande amende de justice et a partie. Et luy pourroit len bien couper loreille ou vng poing selon lexigence des cas et lestat des personnes." In Jersey there have been changes or modifications in the modes of punishment following that which has been done in the Duchy of Normandy in the earliest time. We have reason to think, or at any rate there is nothing to show the contrary in our books, that those changes in the mode of punishment were the result of new enactments.

2766. Do you think that the change in the way in which the Court exercises its discretion makes the old punishment cease to be law?—No; I do not.

2767. You do not think, if a man knocked out my eye, and the Court ordered the man's eye to be knocked out, it would be bad law?—At the time Rouillé wrote it is difficult to say whether it would be considered law, when there appeared to be another punishment substituted at that time.

2768. Is that more than a choice of punishments?—Yes; I think it is a substitution at that time.

2769. I gather from you that there was always, by the law of Normandy, a discretion in the Court in the amount of punishment, which has been carried out in the Courts of Jersey?—I should say, precisely in the same way.

2770. Then it is a discretion which binds, or at all events, binds in one direction, their suc-

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cessors?—Supposing a punishment were decreed, but that, during a period of thirty or forty years, another was substituted, that would be substituting that punishment for the prior one; and the more recent would be considered the punishment to be awarded.

2771. Would the latter punishment be the law?—It is a difficult thing to say that it would positively be the law: there always arises a little difficulty: but there is that change of punishment.

2772. Will you read on a little farther?—"Et luy pourroit len bien couper loreille ou vng poing selon lexigence des cas et lestat des personnes. Et oultre selon lopinion de plusieurs se vng homme avoit creve les yeulx a vng aultre ou coupe le poing, ou le bras, ou la jambe il ne debveroit pas pour ce estre pendu ou recepeior punition capitalle. Mais serait puny par la discretion de Justice selon lexigence du cas. Toutesfois justice ne doibt pas estre ainsi legiere ne incline a pyllorier pour tel cas ou semblable vng homme destat, ne a le punir par peines infamables ne par destresse de prison comme vne simple personne. Mais le doibt punir par grandes et grosses amendes tant a justice que a partie. Et se len demandoit pour quoy les punitions ne sont terminees en tous iceulx cas comme elles sont es crimes capitaulx. Len pourroit respondre que c'est pour la grand mutation et variation des cas qui adviennent qui sont differentz lun de lautre et digne de greigneure punition lun que lautre selon leur circumstance. Et pour ce ny peut on vrayement determiner aultre punition. Mais conuient auoir recours a la discretion de Justice et de raison, qui doibt sur ce pourveoir: en baillant punition greigneure ou mendre selon que le cas le requert."

2773. That would leave it in this way: the law says there is a punishment; but, according to the party or the nature of the case, they shall have the right, at their discretion, to make a modification of the punishment?—Yes.

2774. Is any such right claimed by the criminal Court here?—Without stating that there is such a claim, or such a right, I should say the practice has been very analogous to the reasoning of the passage which has been cited. I will take the instance of the pillory, to illustrate my meaning. The punishment by pillory has been often resorted to since I was at the bar; but, of late years, it has been almost entirely put aside, except in particular cases: but still, if the Attorney General, during the present term, for instance, found it necessary to move the Court to award the punishment of the pillory in a particular case, such as we have precedents for, the disuse of it for the last four or five years would not, it appears to me, prevent the use again of the pillory, if the Crown officers thought it necessary to move for that punishment. As to cutting off the ears, that has been disused for a long period, though it has been in practice since I have been at the bar. I should suppose, if it were insisted on by the Attorney General, there are a great many precedents for it.

2775. If the Attorney General were to conclude, after the enditement had brought in coupable, for cutting out the eye, is that law?—I do not think he could turn to any precedent in our rolls for that: he could for the other.

2776. Mr. *F. Godfray* (Advocate). In 1771, it must be observed, the Court had the power of making laws and ordinances.

2777. (To Mr. *Hammond.*) You say that you think the only sense in which the ancient Coustumier can be considered strictly as law is the definition of crimes, and not the awarding of punishments?—Not as awarding the punishment laid down in those books. And my reason is that we find them at that very period changed without any special enactment.

2778. You conceive the Coustumier would be referred to as law as to the definition of crimes?—Yes.

2779. Mr. Godfray informs us that two distinct heads of definition of crime in the ancient Coustumier have disappeared, and that a more general word has been substituted for both?—I do not think we follow it as to the technical mode of expressing crimes.

2780. Roberie and Larcin are very technically defined in the ancient Coustumier, and adhered to as distinct heads of offence in Pipon and Durell. Those, we understand, are no longer adhered to?—It is not that the law is changed, but the practice. For instance, when an accusation was framed for murder, the word "proditoirement" was introduced. There is nothing of that sort now: so the word "vol" might be also introduced in the same way.

2781. (To Mr. *Le Breton.*) Do you consider that there is any definite law defining crime, and assigning punishment in the criminal Courts of Jersey?—We have no other law than the Coustumier, except one for homicide and another for sodomy, and in the code of law regarding accomplices. The Court use their discretion or equity. Whether it is in consequence of that passage which has just now been cited, I cannot say.

2782. Has it occurred to you that the fact of the law being altered by a general discretion rather than by distinct enactment may be attributed, in some degree, to the Court itself being constituted popularly?—No doubt of it.

2783. Mr. *Dupré.* In the case of Nicolle, he was accused, and found guilty of murder. The punishment for that crime is, and always was, capital; nevertheless, when the Court was called upon to give judgment, two of the Jurats said that their consciences would not allow them to apply a capital punishment; and they opined for transportation for life.

2784. I understand you to agree with what the Attorney General has stated with respect to the formation of the Court?—Yes; the very nature of its formation will necessarily bring variations in the practice.

2785. It will bring about a discretionary and arbitrary exercise of justice?—Yes.

2786. (To Mr. *F. Godfray,* Advocate.) With respect to banishment, do you happen to know whether banishment was always conducted as it is now. At present, you take the trouble to see a man on board a ship, and pay his passage, do not you?—Yes.

2787. Who determines the place to which the passage is to be paid?—The person says, generally, where he wishes to go.

*Deputy Vicomte.* A pass is given from the Vicomte's office.

2788. Suppose a person said, "I should wish to go and live in the Island of Madeira," should you permit him?—He would not be sent there. His place of residence would be ascertained; and we should send him to the nearest port in his country.

2789. *The Vicomte.* I have invariably asked a person where he was born; and, if we could get at the truth, we should send him as near to his place of residence as possible. The object in fact is to send him back to his parish.

2790. (To Mr. *Le Breton.*) May the Commissioners assume that the jurats, in their discretionary administration of the law, have taken as a general guide the progress of public feeling and of enactments in England?—I think so.

2791. Are the Commissioners right in supposing that, where a party has been condemned to a certain punishment, and is in the course of suffering that punishment, it is usual for the Court to exercise the power, upon the recommendation of the Attorney General, that part of the punishment should be remitted?—No.

2792. You know no instance of that sort?—No.

2793. Does the Court possess any power at all of interposing in the way of mercy, so as to diminish the weight of any formal sentence which has been passed?

2794. Mr. *Dupré.* I know of one case, where the Court did so, in the case of a contempt of a civil court. I know of no other case.

2795. (To Mr. *François Godfray*, Advocate.) Banishment is distinctly notified, in the instance to which you referred the Commissioners, as a punishment for certain crimes. It is at present rather a mitigation of the punishment of transportation, in practice, is not it?—I should say the Court would only send a person to Botany Bay, when by the old law he might have been condemned to death.

2796. I suppose banishment is considered one of the lightest punishments which can be inflicted?—There is of course no comparison between banishment and transportation.

2797. After the Attorney General had concluded for imprisonment for two years, might the prisoner's counsel apply for such a mitigation of punishment?—A prisoner is sometimes imprisoned for a year or two, and afterwards banished.

2798. Has the Court a power to banish in all felonies?—Yes.

2799. Can they banish in cases of *délits?*—No. They sometimes order a person to find bail or leave the Island, if he has been a rogue or a vagrant; they are ordered to find bail for their good conduct, or that they will leave the Island.

2800. Would that be so in any case tried before the enditement?—No.

2801. Is there anything which would be tried before the enditement for which they cannot banish?—No: I think banishment may be annexed to nearly every crime which comes before the enditement.

2802. Is there any ordinance annexing banishment to any offence?—There is a law passed in 1798, as to tumultuous or riotous meetings, which authorizes the Court to banish for five years.

2803. Is that a local law, or is it confirmed by Council?—It is confirmed by Council. The following is the second article of the law of 1798.

"Si quelque connétable ou centenier est informé d'un attroupement, ou rassemblement illicite de personnes dans sa paroisse, il est autorisé et chargé de s'y présenter sans délai, et de commander à haute voix, au nom du Roi, à ceux qui seront ainsi assemblés, ou attroupés, de se retirer incessamment et paisiblement chez eux, ou à leurs occupations légitimes; et si demi heure après tel commandement il reste encore au nombre de six personnes au plus ensemble l'Officier de Police en ce cas est autorisé et chargé de saisir et presenter en justice les réfractaires, et pour cet effet de se faire assister non seulement de tous Officiers de Police, mais de toutes autres personnes, lesquelles en cas de besoin il jugera convenable d'appeler à son secours, lesquelles personnes seront tenues de donner au dit Officier de Police toute l'assistance en leur pouvoir, sur peine de telle amende, ou de tel emprisonnement que le cas sera trouvé mériter. Et chacun de ceux qui auront continué ainsi assemblés, nonobstant tel commandement, sera puni par un banissement qui n'excédera pas le terme de cinq ans."

2804. Is there any process now existing by which a person abjures the country?—No.

2805. Was not that, when it existed, where a person took refuge in sanctuary?—Yes: and he was conducted to the sea-side.

2806. Mr *Dupré.* From every church there was a road leading to the sea-side.

2807. Mr. *F. Godfray* (Advocate). Those roads are sown over and do not exist now.

2808. Mr. *Hammond.* They have fallen to the Crown: they were given to Sir Edward Carteret in the time of Charles the Second.

2809. (To Mr. *F. Godfray,* Advocate.) There is no practice now by which a person can avoid a prosecution for a crime by leaving the country?—No.

2810. Mr. *Charles De Ste. Croix.* The following is a case in which the parties were ordered by the Court to find caution for good behaviour or to leave the Island.

"William Gordon et Robert Gordon (fils du dit William Gordon), saisis de fait par le centenier Chevalier de la Paroisse de St. Hélier, et présentés en justice par le connétable de la dite paroisse, sous accusation de s'être, dans la soirée de Samedi, 2e du courant, battus, et d'avoir autrement troublé la paix publique, le tout selon que plus au long est contenu au Rapport du dit centenier, qui est demeuré logé au Greffe. Après que, les dits accusés ont été entendus: il a été ordonné qu'ils donneront caution, tant de leur bonne et paisible comport, que ni eux ni la famille du dit William Gordon ne tomberont point à la charge de l'Isle, sur la penalité de cinq livres sterling, chacun, et, faute à eux de fournir le dit cautionnement, ils seront renvoyés dans leur pays natal. Et est le Vicomte chargé de s'entendre avec la police de St. Hélier afin que la famille du dit William Gordon quitte le pays avec lui."

2810. That is a case in which the Court decided upon the facts so disputed?—Yes.

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There is another case in which the person was accused by the Procureur Général; and that would have gone to the enditement.

"Julia Supple, saisie de fait par le centenier Chevalier de la paroisse de St. Hélier, et présentée en justice par le connétable de la dite paroisse, a été accusée par le Procureur Général de la Reine, en conséquence du Rapport du dit centenier, d' avoir, dans le courant du Mois de Novembre, 1842, ou vers ce tems là, retenu sans droit une quantité de linge et autres effets d'habillement, entr' autres, quatre draps de lit, quatre caisses d'oreiller, une jupe en flannelle, et un essuiemain, la propriété de Dlle. Charlotte Igraden, veuve Backhouse, et de sa famille; les quels effets lui avaient été remis pour être lavés; et d'avoir, la dite Julia Supple, frauduleusement approprié les dits effets à son profit, en les déposant en gage chez Mr. Joseph Stephens, fripier en la ville de St. Hélier. La dite Julia Supple a sur ce plaidé et fait sa déclaration, qui a été redigée et logée au Greffe; et elle a été constituée prisonnière sous la dite accusation, instance du dit sieur Procureur Général de la Reine, au quel il est permis d'informer, étant le Rapport du dit centenier, ainsi qu'un essuiemain, produits en cour par le dit connétable, demeurés logés au Greffe."

"Julia Supple, convenue à l'instance du Procureur Général de la Reine, pour ouir dépôt d'informateurs sur l'accusation qui lui est faite, en conséquence du Rapport du centenier Chevalier de la paroisse de St. Hélier, le tout selon que plus au long est contenu au dit Rapport et en l'acte de la cour, en date de l'an 1842, le 12e jour de Décembre. La dite Julia Supple a été reçue à son offre de vuider le pays, et se retirer dans son pays natal pour éviter plus outre poursuite. Partant, conformément aux conclusions du Procureur Général de la Reine, il lui est défendu de retourner dans cette Isle avant l'expiration du terme de cinq ans, sur telle peine qu'il appartiendra, sauf à elle à donner caution de sa bonne conduite et qu'elle ne tombera point à la charge du pays à l'avenir. Et elle est renvoyeé en prison jusqu'à ce qui'il se présente une occasion convenable pour la faire transporter dans son pays natal. Et le connétable de St. Hélier est chargé de s'entendre avec le Vicomte; afin que la famille de la dite Supple quitte le pays avec elle."

2811. That is the ordinary mode of proceeding, is it?—Very frequently.

2812. (To Mr. *Dupré.*) Would you refer this also to the same discretionary power you have mentioned, of doing what was right under the circumstances of the case, which you suppose to be vested in the Court?—Undoubtedly: it is established by long custom.

2813. (To Mr. *Charles De Sainte Croix.*) Is there any distinction in practice between the natives of the Island and those who are not natives, as to that?—There is.

2814. What is the distinction?—Natives of the Island are not sent out of the Island, because they might be sent back.

2815. The Commissioners understand that, in some cases, English paupers have been sent away to their place of settlement in England?—Yes.

2816. Are the lawyers here familiar with the English law of settlement?—The English law of settlement is that which is generally quoted in our Courts. The question has only arisen very lately, within two or three years.

2817. (To Mr. *Le Breton*). If you send paupers back to their settlement, do you look into the question whether a particular adjudication of settlement in England is such as to bind any future case?—No: we do not examine into particulars: we merely send them to the actual place of their birth.

2818. Would you send a married woman to her birth settlement?—To the birth settlement of her husband.

2819. Mr. *F. Godfray* (Advocate). That is to say, we give them a pass to Southampton, directing that they are to be passed forward.

2820. If a man were to say, "I was born in Ireland, but I have served a parish office in England giving me a settlement in Huntingdon," should you send him to Ireland?—Yes: I have never known of such a case as that.

2821. Are persons ever allowed to leave the Island to avoid prosecution?

2822. Mr. *Charles De Sainte Croix.* I have quoted such a case.

2823. In that case, is sentence of banishment recorded against them?—Their offer to leave the Island is recorded; and they are banished upon the conclusions of the Attorney General.

2824. (To Mr. *F. Godfray,* Advocate.) That does not agree with your statement, that persons are not permitted to leave the Island to avoid a prosecution.—I suppose the person in the case referred to was permitted to leave the Island, beeause the Attorney General had no evidence against him. I do not suppose, if the Attorney General had had evidence enough to convict him, it would have been permitted.

2825. Mr. *Charles De Sainte Croix.* It is generally done, when the evidence is imperfect or the offence is very slight.

2826. (To Mr. *F. Godfray,* Advocate.) Have you any definite offence of piracy?—No.

2827. An act of piracy on the High Seas would hardly take place without comprehending three or four crimes?—Yes: some of the crimes would fall within one of the definitions; and they would be punished for that.

2828. You have a distinct law as to Receivers, have not you?—Yes.

2829. From Rouillé and the Order in Council of 1635?—Yes.

2830. Mr. *Charles De Sainte Croix.* This is the case of Le Brocq, who was banished.

*The same is read as follows..*

Octobre 4. L'an mil huit-cent trente-trois, le quatrième jour d'Octobre.

Par devant Messire Jean De Veulle, Chevalier, Bailli de l'Ile de Jersey, assisté de Charles Le Maistre, Philippe De Carteret, Philippe Marett, George Phil. Benest, Phil. D'Auvergne, George Bertram, Nicolas Le Quesne, Edouard Léonard Bisson, et Phil. De Ste. Croix, écuyers, Jurés.

François Le Brocq, fils Edouard, sous accusation d'avoir, dans la soirée du Jeudi, 11 Juillet, 1833, ou vers ce temps là, assailli, sur le chemin public, en la paroisse de St. Ouen, Monsieur Edouard Le Gresley, de la dite paroisse, de l'avoir terrassé et violemment maltraité, et de lui avoir volé douze

billets de banque, ou environ, de la valeur d'une livre sterling chacun, ou d'avoir aidé, assisté ou participé au dit assaut et au dit vol, le tout selon que plus au long est contenu au rapport du chef de police de la paroisse de St. Ouen et aux actes de la Cour à ce sujet; et le quel François Le Brocq, fils Edouard, a été endité criminellement sur la dite accusation, comme paroît par acte en date de l'an 1833, le 26e jour de Septembre, convenu à l'instance du Procureur Général du Roi, pour ouir le rapport des hommes de la grande enquête du pays, dont il a démandé le bénéfice, et voir ensuite ordonner par justice sur la dite accusation.

De la paroisse de St. Ouen :—
Philippe Du Heaume, écuyer.
Philippe Le Cornu, écuyer.
Monsieur Edouard Le Rossignol.
Monsieur Philippe Vibert.
Thomas Dumaresq, gent.
Monsieur Philippe Le Cerf.
Monsieur Jacques Le Brocq.
Monsieur Jean Le Maistre.

De la paroisse de St. Pierre :—
Pierre Daniel Marett, écuyer.
Thomas Le Breton Pipon, écuyer.
Monsieur Philippe Le Feuvre, jun.
Monsieur Edouard Ballaine.
William George Le Gallais, écuyer.
Monsieur Jean Falle, jun.
Monsieur Edouard Le Couteur.
Philippe Le Couteur, écuyer.

De la paroisse de Ste. Marie :—
Jean Perrée, écuyer.
Nicholas Arthur, écuyer.
Monsieur Jean Arthur.
Charles Arthur, écuyer.
Jean Le Couteur, gent.
Samuel Hamon, gent.
Jean Vibert, jun., écuyer.
Monsieur Hélier Vibert.

Actionnés par le dit Sieur Procureur Général du Roi pour passer comme hommes de la grande enquête du pays, à la charge ou décharge du dit François Le Brocq, fils Edouard, sur la dite accusation. Les hommes de la grande enquête ont été dûment assermentés, comme en tel cas est réquis et accoutumé; l'accusation a été lue au dit prisonnier; et il a sur ce plaidé et fait sa déclaration, qui a été rédigée par écrit et logée au greffe. Lecture a été donnée des dépositions des témoins, çi-devant rédigées par écrit et logées au greffe, et des autres pièces de la procédure. Le dit prisonnier a été entendu en sa défense par le moyen de son avocat; et le Procureur Général du Roi a été sur ce ouï. Les hommes de la grande enquête se sont rétirés, avec les pièces de la procédure, pour délibérer dans le particulier; et, étant de retour et à un accord, ils ont fait leur rapport à la justice, par le moyen de leur chef, que le dit François Le Brocq est plutôt coupable qu'innocent del' assaut et du vol dont il est accusé, mais sans maltraitemens. En suite de quoi, le dit prisonnier ayant été entendu en mitigation par le moyen de son avocat, la Cour, faisant droit aux conclusions du dit Sieur Procureur Général du Roi, et considérant les circonstances atténuantes qui ont accompagné la commission du crime, a condamné et condamne le dit François Le Brocq à un emprisonnement solitaire d'un an, et, à l'expiration du dit emprisonnement, à être banni de cette île, pour le terme et espace de sept ans, sans pouvoir y revenir pendant ce temps, sur peine d'une punition plus grève. Et tous les biens, meubles et héritages du dit François Le Brocq demeurent acquis et confisqués au Roi, ou au Seigneur auquel il appartiendra. Et a le greffier délivré au dit Edouard Le Gresley l'argent et les effets logés au greffe dans cette poursuite.

2831. He was a native, was not he?—Yes.

2832. Looking through the Acts of the Court or the annals of the Prison, do you find that it has been a common punishment to inflict upon natives, during the last ten or twelve years, that of banishment?—Lately natives have not been banished the Island; I think not since the change in the Poor Law system in England. The authorities in England have been much more strict in sending them back again since that change; but, before that, natives, as well as English, indiscriminately, were banished. I have known an instance of a native of the Island banished returning twice; and, after returning a second time, he was sent back, and forbidden to return on pain of its being made a capital crime. I believe, however, he did return: the sentence was not put into execution: he was sentenced to death; but, on a petition to the King in Council, the sentence was commuted into seven years' transportation; and he subsequently obtained a pardon. The Court had no alternative but to sentence him to death.

2833. (To Mr. *F. Godfray*, Advocate.) You have no distinct punishment for embezzlement, except as a species of larceny, have you?—No.

2834. I think you have no general head of Frauds in your law, have you?—No; but they are punished.

2835. Supposing the case of Concealment of his goods by a bankrupt?—In that case, there is a special punishment by a law of the island, confirmed by the King and Council. It is the law of the 19th of January, 1832: "Sur les Décrets." The following are Articles 45 and 46.

Article 45. Quiconqne, étant prisonnier pour dette, ou ayant remis son bien entre les mains de la justice, détériorera, ou fera détériorer, aucune partie de ses biens, sera puni d'un emprisonnement de trois mois, au moins, et de deux ans, au plus. Quiconque l'assistera à faire les dites détériorations, sera puni d'un emprisonnement de trois mois, au moins, et de deux ans, au plus, et sera en outre obligé de réparer le dommage causé.

Article 46. Quiconque, étant à la veille de perdre un héritage dans un décret, détériorera, ou fera détériorer aucune partie de cet héritage, sera puni d'un emprisonnement de trois mois, au moins, et de deux ans, au plus, et sera, en outre, obligé de réparer le dommage causé. Quiconque l'assistera à faire des détériorations, sera passible des mêmes peines.

2836. In the case of obtaining goods by personation of another person, what is the punishment?—There is a special punishment for that: it would be obtaining goods "frauduleusement, sur faux prétextes."

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2837. There is no special law of Burglary, is there, except as a circumstance attending the Vol?—No.

2838. You have a law as to Arson, have you not?—Yes.

2839. Do you think "les Ardeurs" is confined to persons burning houses?—I think so.

2840. A stack, you think, would not be included in it?—I think not.

2841. You have the crime of Forgery, have not you?—Yes.

2842. Would you confine Forgery to the case of a deed?—No. Persons have been punished here for forging a bank note. Any kind of Forgery, in fact.

2843. Suppose I wrote a letter in your name to a man?—That would be a forgery.

2844. Whatever the subject of the letter?—Yes.

2845. In the case of an invitation to dinner, for instance?—No: there must be some criminal intention in a Forgery.

2846. Must it be a fraud?—Yes.

2847. A pecuniary fraud?—A fraud upon property.

2848. In the case of forging a receipt to avoid payment of a debt?—Yes.

2849. You think the distinction between Murder and Homicide was authorized from the earliest times, from your finding them distinctly mentioned in the Coustumier?—Yes.

2850. (To Mr. *Hammond.*) In the case of Jollin, who murdered his father, your attempt was to reduce it to manslaughter, was not it?—Yes.

2851. That was when Sir Thomas Le Breton was bailiff?—Yes.

2852. Your argument, I believe, was principally derived from English books?—Yes.

2853. You relied upon the fourth Institute, I believe; and Mr. Le Breton quoted against you a passage from Blackstone, which is a transcript from Hale?—I cannot remember what were the books quoted; but I believe I relied mainly upon English books.

2854. That being in the time of Sir Thomas Le Breton, you probably do not agree with Mr. Godfray as to the date of the introduction of the practice of quoting English books?—Since I have been at the bar, I have seen it, and prior to that time.

2855. How many Bailiffs have you practised under?—I practised under Sir Thomas Le Breton as Lieutenant Bailiff of Lord Carteret. I remember hearing Mr. Le Couteur plead a cause as an advocate, before he was Solicitor-General: and I remember his quoting largely from an English author at that time.

2856. Do you recollect the year of Jollin's trial?—In 1829.

2857. What would you do in the case of a man who set fire to a wheat-stack?—I know of no case where a wheat-stack was set fire to. I suppose he would be prosecuted for setting fire to a wheat stack, and he would be punished in the discretion of the Court. Arson would be punishable with death; but I do not think burning a wheat-stack would come within that.

2858. It would be a malicious injury to property, which the Court would take notice of and punish, according as, in its discretion, it thought justice and equity required?—Exactly.

2859. Is Mayhem ever punished, except as a violent assault?—I have no recollection of its being punished, except as a violent assault. I know no case where a man has lost his limb.

2860. Mr. *Dupré.* There was a case of a man knocking out another's eye by firing a gun: the enditement found him Not guilty.

2861. Can you say what would have been the conclusion of the Attorney General?—I should think imprisonment with hard labour.

2862. Would it be treated as an Assault simply, or as the crime of Mayhem?—He simply fired at him. The custom of the island is, if a person marries, for his friends and neighbours to go and fire round his house. In this case, the neighbours went to perform this ceremony. The father of the bride got very angry, and was accused of firing over a hedge at the people. The shot struck the eye of one of the men, and the person was tried in consequence.

2863. Did the accusation lay an attempt to kill?—I think it did.

2864. Mr. *Charles De Sainte Croix.* The following is the Act of Court in that case.

*The same is read as follows.*

"L'an mil huit cent quarante-trois, le dix-septième jour de Mai. * * * * Edouard Touzel et Messrs. Philippe Richard Touzel et Clement Le Neveu, ses cautions, le dit Edouard Touzel sous accusation d'avoir, dans la nuit de Samedi 1er à Dimanche 2e October 1842, ou vers ce tems là, tiré un coup de fusil chargé à plomb sur Mr. Francis Pike, lorsque le dit Pike était dans le chemin public proche la maison du dit Edouard Touzel en la paroisse de St. Clément; par quel coup de feu le dit Pike fut atteint et grièvement blessé à l'œil gauche et à l'épaule; le tout selon que plus au long et contenu au Rapport du connétable de la paroisse de St. Clément, et aux Actes de la Cour à ce sujet, convenu à l'instance de l'Avocat, stipulant l'Office de Procureur Général de la Reine pour ouir le Rapport des hommes de l'enditement de la paroisse de St. Clément sur la dite accusation, Messieurs Jean Averty, centenier, George Jean Pirouet, François Roissier Junr., Richard Filleul, Philippe Le Rougetel, Josué De Rue, Thomas Clément Junr., Philippe Manger Junr, Philippe Filleul, William Baal Arthur, Thomas Touzel Jun., Jean Le Neveu, fils Clément, Philippe Payn, actiounés par le dit Sieur Advocat, stipulant l'office de Procureur Général de la Reine, pour passer comme hommes d'Enditement à la charge ou décharge du dit Edouard Touzel sur la dite accusation. L'accusation a été lue au dit prévenu; et il a sur ce plaidé, et fait sa déclaration, qui a été rédigée et logée au Greffe. Lecture a été donnér des dépositions des témoins, ci-devant rédigées et logées au Greffe, et des autres pièces de la procédure. L'accusé a été entendu en sa défense par le moyen de son Avocat; et l'Avocat, stipulant l'office de Procureur Général de la Reine, a été oui. Les hommes de l'enditement se sont retirés, avec toutes les pièces de la procédure, pour conférer dans le particulier; et, étant de retour, ils on fait leur Rapport à la justice: savoir, un nombre plus que suffisant d'entr'eux, qu'ils croient en leurs consciences que l'accusé est plutôt innocent que coupable de l'accusation. Partant, conformément aux conclusions du dit Sieur Avocat, stipulant l'Office de Procureur Général de la Reine, il a été déchargé de l'accusation et libéré de son cautionnement."

2865. (To Mr. *F. Godfray,* Advocate.) As to Assaults, does not the intent of the assault form a part of the specific accusation?—The intention would be put down.

2866. Might the enditement affirm the Assault and negative the intent?—Yes.

2867. Supposing they found the whole, what would be the conclusion of the Attorney General?—Imprisonment.

2868. With capital punishment?—No: the Court possibly would transport the offender.

2869. An Assault with intent to commit a Rape, for instance?—If the Rape was not committed, it would not be capital.

2870. In the case of an Assault laid with an intent to murder; would the punishment still be merely imprisonment?—I do not think, unless the man were murdered, it would be a capital punishment.

2871. Do you recognize a specific class of offences in cases where the act, if carried into effect, would have been Murder, or Grievous bodily harm?—The punishment would vary.

2872. Are not those aggravated Assaults distinguished only by being triable by an enditement instead of being disposed of by the Court?—They would be distinguished by their punishment, and, naturally, by the form of the accusation. An assault need not be of that very grievous nature for the man to go before the enditement. Grievous bodily harm, without the intention of killing the person, would go before the enditement.

2873. An Assault with intent to commit a Rape, an Assault with intent to commit murder, or to maim, would be Assaults with intent to commit a felony; but an Assault to do grievous bodily harm would not be an assault with intent to commit a felony?—No: but still that would go before an enditement.

2874. What would be the case with respect to a felo de se?—I think that is, in practice, set aside, because the jury always find that the man destroyed himself when he was mad.

2875*a*. But the law is not altered?—No: a man would forfeit his chattels.

2875*b*. Did you ever know an instance of Assault de charrue?—No.

2876*a*. Should you treat it as a common Assault?—Yes.

2876*b*. Mr. *Marett.* All crimes committed félonieusement were crimes which were triable by wager of battle. Félonie, in the Coustumier, signifies an offence done by a vassal to his feudal lord, or a crime committed by another person with violence; but Felony, in the English sense of the word, is not to be found at all in the Coustumier. There was this distinction between Félonie and Larcin: that Félonie might be compounded before battle, whereas Larcin and Treason could not.

2877. Mr. *F. Godfray* (Advocate). The following is from Rouillé.

" L'en fait suyte d'assault et de paix brisee en diverses manieres selon la diuersite des lieux. Car len suyt dessault de charue, et d'assault de chemin, de assault de maison, de assault de champ. Les suytes en sont toutes faictes en vne maniere: mais que len nõme les lieux ôu l'assault fut faict; et si conuient monstrer le mesfaict du corps et le sang ou il y ait peril de mort on de mehaing. La plaincte doibt ainsi estre faicte. Je me plaing de D. qui'en la paix de Dieu et du Duc me assaillit felonneusement a ma charue en aguet pourpeuse et me fist ce sang et ceste playe que je monstre à la justice."

2878. In the case of an offence of the sort contemplated, the corpus delicti would be the injury to the man's person, and the other would be a circumstance of aggravation?—Exactly.

2879. In case of False Imprisonment, should you treat that as an Assault, or is there any specific punishment for it?—There is no specific punishment: but I know of no instance of a person having prosecuted another criminally for that.

2880. Would it be made a cause en ajonction?—Or an action for damages.

2881. Is the Abduction of women a specific offence?—No: it would be an Assault.

2882. Mr. *Marett.* Terrien speaks of that, under the head of " rapt," as being distinguished from Rape.

2883. The language of the Coustumier as to Rape is " despucellement de femmes à force." Of course the crime would not be confined to that now, would it?—No.

2884. Would the fact that the woman was a person of bad character, a prostitute, prevent a person being punished for violating her?—No.

2885. Mr. *Hammond.* Terrien makes a difference as to the punishment in that case.

2886. Do you recognise a legal distinction as to that now?—I believe not.

2887. Unnatural crimes are provided for by an order in Council?—Yes, on the ground that there was no law.

2888. In the case of Coining?—We have tried Coining in the Island lately: when it was Treason, we could not try it.

2889. Did it cease to be Treason here, when it ceased to be Treason in England?—I suppose so.

2890. Mr. *Dupré.* I think it has never been tried here since it was made no longer Treason by enactment.

2891. Is that Act registered here?—No; I do not think it is.

2892. As to Uttering bad money, knowing it to be bad, that of course has always been tried here?—Yes.

2893. Have you any head under which you put that offence?—No; it is treated as a fraud against the party.

2894. How is it punished?—Mr. *Charles De Sainte Croix.* It is punished in the same way as Forgery was.

2895. Mr. *F. Godfray* (Advocate). It would be punished by imprisonment.

2896. How would Having weights which are false, or which the Vicomte has not stamped, be punished?—There is a law as to that in page 259 of the code of 1771.

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2897. Seditious Meetings or Seditious Publications: have you any law as to them?—There is the law which has been already referred to as to Tumultuous and Seditious Meetings. The preamble is as follows.

"Considéré que plusieurs écrits anonymes et incendiares, tendant à exciter la haîne des habitants de cette Ile contre les autorités constituées, à les animer à la sédition et à la révolte, et les encourageant à massacrer les Magistrats, et à suivre d'ailleurs l'exemple du peuple Français, ont été depuis quelque temps répandus dans le public: Considéré que plusieurs de ces écrits anonymes exhortent le peuple à des rassemblemens, et indiquent des moyens pour agir de concert afin de mettre en exécution les horribles et sanguinaires menaces contenues dans ces écrits: Considéré que depuis que ces écrits ont paru, il s'est manifesté des dispositions, et des mesures même ont été prises, pour des rassemblemens illicites et alarmans: et considéré que les lois existantes ne suffisent pas pour prévenir, réprimer et punir efficacement des attentats si dangereux à la société: Les Etats, dans la vue de conserver l'ordre et la tranquillité publique, et protéger les honnêtes et paisibles habitans de ce déréglement funeste, ont jugé nécessaire, dans ces circonstances urgentes, de proposer et adopter les Articles suivans, pour avoir force de loi dans ce pays, et y être observés, moyennant la Sanction de Sa Très Excellente Majesté en Conseil. Partant les Etats très humblement supplient Sa Très Excellente Majesté en Conseil d'accorder son approbation Royale aux Articles suivans, afin qu'ils ayent force de loi dans ce pays, et y soient observés, jusqu'à ce que par la même autorité, il soit jugé convenable de les rappeler ou changer. Desquels Articles la teneur ensuit."

2898. (To Mr. *Dupré.*) Have you any general law as to Sedition? For instance, as evinced by speaking or writing?—We have no law; but persons have been prosecuted for it.

2899. What would you do in such cases?—They would be tried by the enditement.

2900. What would the charge and the punishment be?—They would be tried for Sedition, and punished by fine or imprisonment, or both.

2901. With deportation?—Most likely not, unless it came under the law of 1797. By the oaths taken by several of the officers, they are bound to prosecute for Sedition.

2902. Mr. *Charles De Sainte Croix.*—I have here an entry of a prosecution for Sedition.

*The same was read as follows:*

"John Jefferson Davis, natif de l'Isle de Wight, convenu à l'instance du Procureur Général de la Reine pour ouir dépot d'informateurs sur l'accusation qui lui est faite en consequence du Rapport du connétable de la paroisse de St. Sauveur, d'avoir, le Dimanche le 19e jour de Juin 1842, ou vers ce tems là, tenu des propos séditieux, criminels et méprisants touchant la personne et le Gouvernement de Notre Souveraine Dame Victoria, Reine de la Grande Bretagne et de l'Irlande, en disant et déclarant en langue Anglaise, en parlant de, et faisant allusion à, John Francis, lequel a été trouvé coupable de Haute Trahison en Angleterre, *que c'était dommage qu'il* (le dit Francis) *n'eût point tué la Reine.* "*It is a pity that he* (Francis) *did not shoot the Queen:*" Plus, en disant et déclarant aussi, en langue Anglaise, en parlant et faisant allusion au dit John Francis que le Jury n'aurait pas dû le trouver coupable, "*That the Jury ought not to have found him guilty:*" Plus, en disant et déclarant aussi en langue Anglaise, *nous n'avous pas besoin d'une Reine, l'Angleterre serait mieux sans Reine, nous devrions être gouvernés par un Président comme en Amerique, ce serait une économie pour la nation, et cet argent pourrait être donné pour la nourriture des pauvres,*" "*We don't want a Queen, England would be better without a Queen, we ought to be governed by a President, as in America, it would be a saving to the nation, and the money might be given to feed the poor,*" ou d'avoir dit et prononcé des propos et paroles ayant ce sens et significations, les dits propos et paroles constituant un délit grave contre la personne et le gouvernement de notre dite Souveraine Dame Victoria, suivant l'acte de la Cour en date de l'an 1842 le 27e jour de Juin: Mr. James Caple à la cause à informer. Le dit James Caple a déposé par serment, et sa déposition a été rédigeé et logée au Greffe. Ensuite de quoi le dit John Jefferson s'étant avoué coupable du crime dont il est accusé, et s'étant soumis à la justice, la Cour oui le Procureur Général de la Reine en ses conclusions, a condamné le dit John Jefferson Davis à subir un emprisonnement et un travail forcé de trois mois; et injonction lui a été faite de se conduire à l'avenir d'une manière convenable, sur telle peine qu'il appartiendra."

2903. (To Mr. *F. Godfray,* Advocate). Have you any law as to Unlawful Oaths?—No.

2904. How should you punish that offence?—I do not know.

2905. It would be treated as a crime, would not it?—I know no example of an unlawful oath having been administered in the Island: therefore I cannot say how it would be treated.

2906. With regard to the offence of Breaking Prison, is there any particular offence of that kind in the laws of Jersey?—No; there would be a punishment for it.

2907. What offence would it be?—Bris de prison.

2908. What would be the punishment attached to it?—Imprisonment and hard labour: it would be that, added to the punishment they would have incurred for the crime they had committed.

2909. If a person in prison for three months with hard labour were to break prison, how would he be punished?—He would be punished, in the discretion of the Court, with imprisonment and hard labour.

2910. Would it be tried as a crime by the enditement?—No; I think it would be tried by the Court.

2911. Mr. *Dupré.* There is an article in the code of 1771, which applies to Prison Breaking.

"Conformément à l'ordre du Conseil de 1635, le 12 Juin, ceux qui seront accessoires en crimes de meutre, ou qui en félonie, après le crime commis, recevront ou favoriseront les coupables avant leur conviction, ou qui emporteront ou favoriseront l'évasion des coupables hors de l'Isle, après que proclamation aura été faite de les appréhender; et ceux qui briseront la prison, ou assisteront tels délinquants, seront punis par amende et emprisonnement."

2912. Has the offence of Returning from Transportation ever occurred in this country?—No; I have no knowledge of any case.

2913. I think I understood that, in case of a banished person returning before the period of his banishment expires, he is considered to be liable to incur the punishment attached to the crime for which he was banished?—I could not say that.

2914. What punishment would attach?—At the discretion of the Court, imprisonment.

2915. Mr. *Hammond.* There is a case which would illustrate our mode of proceeding, before the present mode was adopted of transporting for life. A man named Sandford, in 1820, was tried and convicted: he was sentenced to be banished for seven years, under pain of a greater punishment in case of returning before his banishment expired. In April 1821, he was brought up for returning before the expiration of the period of his banishment. He had been, first of all, scourged. He was then scourged avec grande effusion de sang; and then he was banished under pain of death if he returned. He did return, and was punished with sentence of death: but the Court adds that, taking into consideration the circumstances of the case, they recommended him to mercy. I was then a young member of the bar; and the Bailiff requested me to send up a petition for the prisoner. The sentence was commuted into transportation for twenty years to a penal settlement. I believe that was one of the first instances of transportation from Jersey to a penal settlement. He was kept in the hulks, and subsequently was pardoned, and pleaded his pardon when he was again taken up here.

2916. Is there any particular punishment attached to perjury?—I know of no case where a man has been tried for perjury.

2917. Can you say at all what would be the punishment for perjury?—I know of nothing more than is laid down by Mr. Pipon.

2918. You are aware that in England it is a transportable offence?—Yes.

2919. Would a conviction for perjury render the person incompetent for ever as a witness?—Yes; but the law which has been sent for confirmation, and which the Commissioners have seen, I think, will destroy that.

2920. That law would restore competency after the punishment has been undergone?—Yes.

2921. How is Misconduct in an officer punished?—It is laid before the Court.

2922. In The case of Bribing an officer?—The Court would take cognizance of all those offences.

2923. Do you mean, as a contempt of justice?—No; the Queen's Procureur Général will prosecute them.

2924. He prosecutes in all cases?—Yes; it would be a public action on the part of the Procureur Général against the party who was a delinquent.

2925. Tried by the enditement, or decided by the Court?—Before the Court generally. There are some cases in which it would be tried by the enditement.

2926. (To Mr. *Dupré.*) Within your own practice, have you any instance of any officer of the Court being tried for misconduct in the discharge of his duty, or for accepting a bribe?—For misconduct, I have; not for receiving a bribe.

2927. Would it be tried before the enditement, or before the Court?—Bribery would be tried before the enditement, I should think. A simple case of Misconduct in a public officer would be tried, I should think, before the Court, without the enditement.

2928. How would a case of that sort originate?—A case before the enditement usually commences in the constable's Report.

2929. It would depend upon the manner in which the information was laid?—If it were laid by the constable, it would come on upon his Report. if the information was given to the Attorney General directly, it would be done by a process which we call a Représentation.

2929. Mr. *F. Godfray* (Advocate). There was a case in point; the Lieutenant Governor prosecuted me as constable.

2930. For alleged misconduct as constable?—Yes, and for writing a letter which he thought contemptuous. That was tried before the Court merely, though I tried to have it sent to a jury.

2931. Was it tried at the simple instance of the Procureur Général?—Yes. The Lieut. Governor wrote to the Procureur Général; and he made a représentation to the Court. I should say that I was acquitted. There was also the case of Mr. Nicolle; he was dismissed from office.

2932. Was that at the representation of the Procureur Général?—Yes: he was constable; and he had presided at a meeting which the Court declared to be illegal; that was under the law of 1797.

2933. Was that also tried before the Court?—Yes.

2934. The *Vicomte.* I have here a prosecution, of the date of 1770, in which a vingtenier was discharged and punished for seditious language.

*The same was read as follows.*

" A La Cour Royale de L'Ile de Jersey.

L'an 1770, le 13$^{me}$ jour d'Aout, sur l'action du Pro$^{r}$ Gen$^{l}$ du Roi, vers Mr. Jean Robichon jun., un des vingteniers de la paroisse de St. Martin, saisi de fait et présenté en justice par le Député Vicomte en vertu de l'Acte de la Cour de l'an 1770, le 11$^{me}$ du courant, pour subir ce que justice trouvera propre, pour s'être servi de propos séditieux et menaçans à l'assemblée de la d$^{te}$ paroisse, tenue le 9$^{eme}$ de ce mois, ayant déclaré, en parlant de l'Ordonnance récemment faite pour les chemins, que cela occasioneroit une seconde révolte, et, en outre, que cet ordre là étoit un bougre d'ordre. Après l'aveu du dit Robichon, et sa soumisson à la Cour, oui le Proc$^{r}$ Gen$^{l}$ du Roi en ses conclusions, il demeure déchargé de la place de vintenier et d'officier du con$^{ble}$, condemné à l'amende de deux cents livres d'ordre, applicable tiers au Roi, tiers à la réparation de la cohue royale, et l'autre tiers à l'Hôpital Gen$^{l}$, et à démander pardon à Dieu, au Roi, à Mons. le Commandant et Chef, et à la justice, ce qu'il a présentement effectué, et à donner caution de son bon et paisible comport, et envoyé en prison au pain & à l'eau pour l'espace de quinze jours, étant défendu au geolier de lui administrer

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d'autres alimens: en suite de quoi a produit Mr. Jean Carter sen., pour sa caution, lequel y est demeuré accordamment."

2935. How would a case of Riot be tried?—Under the law of 1797.

2936. With regard to a person Breaking forcibly into a house with a view of taking possession of it?—That would be punished by the Court, or he would have a civil remedy, if he chose.

2937. By Clameur de Haro?—That would prevent a person coming in at all; if the person inside called out "Haro," that would prevent the other entering.

2938. Suppose he did enter, notwithstanding, what would be the consequence?—Then he would be punished more severely.

2939. Disobedience to the Clameur would itself be a crime?—Yes.

2940. In civil matters, is Clameur de Haro a common mode of proceeding now?—It is only adopted as to the possession of landed property.

2941. It is a common mode still, is it?—Yes; it is a common and a very summary mode; it has some advantages: it will apply to Term or to Vacation.

2942. In the case of Forcible Entry, would that be punishable by imprisonment?—Yes, or fine, according to the nature of the case.

2943. And so the non-obedience to a Clameur de Haro?—Yes.

2944. What is the technical form of taking possession of land after Clameur de Haro?—I have never known a case where a person has taken possession of a piece of ground after a Clameur de Haro. The moment a Clameur de Haro is called, proceedings are stayed.

2945. But, if a person does go on, he becomes guilty of a crime?—Yes.

2946. Is there any specific name for that crime?—He would be actionné by the Attorney General; and it would be called "Mépris de Haro."

2947. Mr. *Le Sueur*. There have been cases where a person has been fined for continuing work after a Clameur de Haro has been cried.

2948. Mr. *F. Godfray* (Advocate). There have been cases where persons have been very obstinate, and have gone on with it; and they have been fined.

2949. Can you give us the record of an instance of a condemnation for Mépris de Haro?

*The same was produced, and is as follows.*

L'an mil huit-cent vingt-trois, le vingt-unième jour d'Avril.

Sur l'action du Procureur Général du Roi et Mr. Francois Roissier, voisin et propriétaire de terre dans les environs de la commune du Hocqe, située en la paroisse de St. Clément, sur le fief de Samarés et en cette qualité ayant droit à la dite commune, ajoint, vers Jean Le Neveu, Esq., pour soubir l'amende du Clameur de Haro, que le dit ajoint fut dans la nécessité d'interjetter Jeudi, 19e jour d'Avril, 1821, lorsque le dit Sieur Le Neveu allait, sans aucun droit, faire ouvrir une tranchée dans la dite commune dans l'intention d'y faire ériger un mur, et se voir, le dit Sieur Le Neveu, condamner à telle autre peine ou amende, et à faire telle récompense au dit ajoint, que justice trouvera propre, suivant les prémisses; et ouir record du Député Vicomte, et dépôt de témoins, et droit et jugement sur les lieux, par devant le corps de la Cour, suivant l'acte à ce sujet, et suivant à l'appointement de la cause pour aujourd'hui, Philippe Godfray, Gent., Mr. Jean Feuvre, Junr., et Mr. Philippe Le Jeune, à la cause à témoigner. La justice a vu et considéré les lieux; les parties ont exhibé leurs tîtres et évidences, et ont été entendues en toutes leurs raisons et allégations, par le moyen de leurs avocats. Sur la prétention du défendeur que l'ajoint n'était point partie capable d'interjetter la Clameur de Haro, la Cour a trouvé bien jugé sur ce point par l'acte du 14e Mai, 1821, et mal appelé. De laquelle sentence le defendeur a été reçu á appeler en fin de cause, par devant Sa Très Excellente Majeste en Conseil. Le défendeur est ensuite convenu d'abandonner son appel sur l'autre point préliminaire, mentionné au dit Acte du 14e Mai, 1821, et que le dit ajoint a droit conjointement avec plusieurs des tenans du fief et Seigneurie de Samarés et des voisins de la dite commune à l'usufruit d'icelle; les dits témoins ont déposé par serment, et note a éte prise de leurs dépositions. Un bail à termage de la partie de la dite commune, qui est présentement enclose, au dit Mr. Philippe Le Jeune, daté le 6e Avril, 1821, et dont il est question dans sa déposition, a été logé au Greffe à la requête de l'ajoint, à fin qu'il puisse en avoir copie authentique à ses frais. Après quoi la Cour, oui le Procureur Général du Roi en ses conclusions, a jugé d'opinion unanime que le dit Mr. François Roissier doit être maintenu à l'avenir dans son droit d'usufruiter à la dite commune, comme d'ancienneté: partant le dit Jean Le Neveu, Esq., a été condamné à l'amende de Clameur de Haro, et à payer au dit ajoint un dédommagement de cent livres d'ordre, et aux frais. Et ayant paru que le dit Jean Le Neveu, Esq., a continué l'ouvrage qu'il avait entrepris sur la dite commune après que la dite clameur avait été interjetté, il a été pour ce fait condamné à une amende de cent livres d'ordre, instance du dit Sieur Procureur Général du Roi. Cette sentence, en ce qui a rapport au dédommagement accordé au dit François Roissier, a été prononcée par la majorité des opinions. De laquelle sentence, en ce qui régarde Mr. François Roissier, le dit Jean Le Neveu, Esq., a été reçu à appeler par devant Sa Très Excellente Majesté en Conseil. Vû lequel appel, l'ajoint a été reçu à protester pour toutes pertes, préjudices, intérêts et dommages. Et sont Messrs. Jean Mounamy, Junr. et Charles Coutanche, demeurés pleiges du dit appelant, tant de la poursuite du dit appel dans le tempts permis en loi, que de l'amende, coûtages et dépendances, s'obligeant, le dit appelant, indemniser ses dits pleiges sur tous ses biens meubles et héritages présens et futurs.

2950. In that case, would proceedings be instituted by the Attorney General?—Yes; but sometimes it happens that they go on with the proceedings, and, when the judgment is given, they take both the case and the contempt together.

2951. Mr. *Dupré*. The case could be brought on by the Attorney General, independently of the civil suit.

2952. Is it made usually a cause en ajonction?—Yes; it is always made so. In case a person cries "Haro" improperly, he is fined.

2953. If you cry Haro, being in the wrong, you subject yourself to a fine?—Yes.

2954. If you are in the right, the defendant is fined?—Yes.

2955. Supposing a person stops the moment Haro is cried?—Then the original case is tried.

2956. Any thing is considered to be a crime which makes the cry of Haro necessary?—Yes.

2957. Supposing a person were to Send a Letter to another, threatening him, or trying to provoke him to fight a duel, is that a criminal offence?—Yes; it is punished by the Court.

2958. With respect to Libel and Slander, they are heads of crime, and are cases mentioned by Pipon and Durell?—Yes.

2959. Is the distinction between Slander and Libel, of the one being words spoken and the other words written, known to your law?—You may take either a civil remedy, or ask the Attorney General to be joined in a cause en ajonction.

2960. If criminal at all, would it be a cause en ajonction?—If it were against a public functionary, it might be put en ajonction still, criminally. There was a case of that kind.

2961. What is the punishment in such a case?—I know of no case of a Libel against a public functionary in which a person has been found Guilty. There was one which went on for some time; but it was dropped. If it were a very grave matter, the party might be imprisoned.

2962. Was the case which you have alluded to tried by the Court?—I cannot say any thing about it. Mr. Dumaresq contends that it ought to have been tried before the enditement. It commenced as if an enditement was to be called; the enditement was never called; and they dropped the matter. There was no decision.

2963. Mr. *Dupré.* I think there is a case where a private individual brought an action for Libel which was tried before the enditement.

2964. Do you make this difference in your law between Slander and Libel, that Libel means injurious expressions written, and Slander injurious expressions spoken?—No; there is no such distinction. A cause en ajonction may lie for both. If it was a Libel, it might be by means of a remonstrance, or upon the application of the party; if the Procureur Général chooses to be a party to the case, he becomes one. In the other case, for mere words, it is a more summary proceeding; the party applies to the Procureur Général, who signs a bill en ajonction.

2965. A proceeding for Slander, supposing Slander to mean words spoken, as contradistinguished from written, is a proceeding more summary than the other?—Yes; the other must be by means of a Remontrance, setting forth the Libel and all the other facts which the party wishes to set forth.

2966. And then claiming the Attorney General to be joined with him?—Exactly.

2967. I understand you to say that there is no distinction between the two?—They are both tried in the same way: they are called "calomnie, défamation."

2968. Both in the case of a written and a spoken Libel?—Yes: in the case of spoken words it would put "or words having that sense or signification."

2969. In the passage from Rouillé, which is cited, he makes use of the word "laidenges" as being equivalent to defamation: does that apply to written and spoken defamation equally?—Yes.

2970. Besides fine and imprisonment, is there any apology made to the party injured?—Not always. According to the discretion of the Court, the amende honorable is made.

2971. Can the Court order it to be made?—Mr. *Dupré:* In case it is sought for.

2972. In what shape is that reparation put?—It is claimed, and the Court decide whether it shall be done or not.

2973. Does the Court prescribe the terms in which the réparation d'honneur is made?—No; I suppose he would say, "I am sorry," "I acknowledge I was wrong," or "You were right."

2974. I believe there was an old form called the "amende honorable?"—Yes.

2975. Mr. *Hammond.* There is one case in which the words to be used were prescribed.

2976. Mr. *F. Godfray* (Advocate). That is obsolete.

2977. The *Vicomte.* I have a case here with respect to the "amende honorable."

"A la Cour Royale de l' Isle de Jersey, L'an 1719, le 21e jour de May, Abraham Piton, qui fut envoyé prisonnier par Acte de l'an 1719, le 6e jour de May; pour avoir proféré plusieurs injures et calomnies contre la personne de l'honorable homme Robert Wilson, Ecur, Lieut. Gouverneur de cette Isle, dans le cimitière de la paroisse de Ste. Marie, au jour de Dimanche, et autres lieux, tendant à émouvoir le peuple à sédition; sur tout quoi la Cour (après avoir sur ce ouy les conclusions des gens du Roy) a condamné et condamne le dit Abraham Piton, considérant l'énormité du fait, à démander pardon à genoux à Dieu, au Roy, à la Justice, et à la partie offensée, et à se prendre par le nez, et à reconnoître qu'il avoit malicieusement menti, ce qu'il a effectué, et est de plus, le dit Piton, condamné à une amende qualifiée, qui sera applicable à la réparation de la prison, et en outre à retourner en prison pour être là détenu, les fers aux jambes, l'éspace d'un mois, au pain et à l'eau, pour être ensuite libéré."

2978. In the case of Smuggling, how do you take notice of that?—That is by an Act of Parliament.

2979. You have an impôt on brandy and wine, have not you?—Yes: and then there is a law protecting it. In all cases for Smuggling, there must be an Order in Council, or a Local Act confirmed by Her Majesty in Council. In the Smuggling Act it says the offences are to be tried before the Royal Court.

2980. That is, without the intervention of the enditement?—Yes, unless under the Smuggling Act there are cases, such as where a man struck an officer, in which case he would be

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tried by a jury. If it is for the recovery of fines, it would be always by the Court; and legally, I think, an appeal would be granted upon a condemnation.

2981. An appeal to the full Court?—Yes.

2982. Is that where the fine is above 5*l.*?—Yes. This appeal was a very modern practice. One case was carried to the Privy Council, in which the Privy Council decided that there was no appeal to them, but to the full Court. Since that, an appeal has been granted to the full Court.

2983. That order has always been acted on?—Yes.

2984. Is Bigamy an offence in this Island?—Yes.

2985. How is it punished?—Mr. *Dupré.* I do not think there is any case on record of that kind.

2986. Mr. *F. Godfray* (Advocate). There is one accused of that offence now, who will be brought before the Court to-morrow.

2987. What is the proof of marriage in this country?—By the persons who have assisted at the marriage. An extract from the register would prove the marriage; but you must identify the person too.

2988. If a person contracts marriage in England, is that a good marriage so as to prevent his taking a second wife in Jersey?—Yes, naturally, if he marries anywhere, so that it is a legal marriage.

2989. If it is a legal marriage according to the law of the country where it is contracted, that would be sufficient to render a person guilty of Bigamy who should marry a second wife in Jersey?—Yes.

2990. Do you allow foreign divorces as annulling the first marriage?—If a man was a foreigner, and there was a divorce in a competent Court, he could not be punished for marrying again, since he would be allowed to do so by the laws of his own country.

2991. In Turkey, for instance?—I do not know what kind of law there is there. I do not know what would be a divorce there.

2992. What constitutes a legal marriage in this country?—There is a law of 1841, which is registered, and is contained in the "Lois et Réglemens," regulating marriages.

2993. Is that as to what constitutes a marriage, or providing for the registration of a marriage?—What constitutes a marriage.

2994. *Mr. Dupré.* It is provided for also in the canons.

2995. (To Mr. *F. Godfray,* Advocate.) Marriages are now regulated, are they, by this late Act?—Yes.

2996. Have you an offence similar to what in England we call Nuisance?—Here the constable would make a Report that there existed a Nuisance, and the party would be brought before the Court.

2997. Would keeping a brothel be a crime?—The constable would make a Report, and the person would be brought before the Court and punished; but it would not be under the word "Nuisance" that it would be abated; it would be merely stated that the person kept a brothel.

2998. So of a person exercising a trade which tended to destroy the health of the neighbours?—The constable would make a Report, or one of the parties would make a complaint to the Attorney General.

2999. Or a dangerous trade, like a manufactory of fireworks?—That would be the same. It was said, the other day, that, when a Report was presented, the Court ordered the person to be seized. It must not be supposed that in the meantime he is put in gaol; the officer takes bail for his appearance on that day.

3000. Is there any power, on the part of the authorities, not only to punish a Nuisance, if it may be so called, but to abate it?—The Court would condemn a person immediately to desist, and inflict a penalty if he did not.

3001. Would they inflict continual penalties till they succeeded?—If the person, after being ordered not to do it, continued to do it, it would become a contempt of the Court, and would be punished.

3002. Is there any specific head of crime for acts of Indecency, or indecent exposure of the person?—Persons are brought before the Court and punished.

3003. Summarily?—Yes.

3004. Is that under the general law?—Yes.

3005. There is no particular law of the States for it?—No.

3006. Is there any law against Gambling?—There is no law against it.

3007. Playing at cards or dice in taverns?—That enters into the law which has been recently passed. It is provided for by Article 9.

3008. Was there an old law applicable to it?—Yes; it is referred to in the code of 1771.

3009. Is the Soliciting the virtue of a woman a specific offence?—The person would be brought before the Court and punished.

3010. Mr. *Dupré.* There have been several instances of punishment for that.

3011. (To Mr. *F. Godfray,* Advocate.) Is the same the case as to Prostitution, as distinguished from Adultery?—They are to be brought before the Court; paillards and putains, by the oath of the constable, are to be brought before the Court.

3012. Are not there some Game Laws in the Island?—Yes; they are contained in the Code of 1771, page 28. Most of the lords of manors have not prosecuted for offences against them; but there was an instance of a prosecution last term.

3013. What is the Droit de chasse?—The Jurats, the crown officers, and the lords of manors possess it. By the 3rd Article of the New Code, a person may destroy game on his own land.

3014. Is Adultery now considered as a crime?—Yes; punished by imprisonment and hard labour.

3016. Is it a crime on the part of both the husband and the wife?—It was formerly the case that a man might be prosecuted for Adultery; but I have known no case lately.

3017. Are there recent instances of any punishment for Adultery?—Yes; there was one punished by imprisonment four or five years ago, which I brought before the Court.

3018. Was that a proceeding upon the Report of a constable?—Yes; I entered a Report, as constable of St. Martin's, at the request of the husband.

3019. Is it a proceeding by enditement?—I think the person might claim to go before the enditement; but in that case he submitted.

3020. Was that a conviction of a man for Adultery?—I think the man and the woman were both brought before the Court.

3021. You say they were punished by imprisonment?—Yes.

3022. There is an order made by the Royal Commissioners, under Queen Elizabeth, on this subject, cited by Pipon and Durell, page 13, of their statement;* is that considered now to be law?—It has always been questioned whether the decisions of the Royal Commissioners of 1591 have ever been law.

3023. They appear to have never received the sanction of the Privy Council?—No: sometimes they have been invoked by the Royal Court in their quarrels with the States: but they have never been registered; nor is there any trace of their being confirmed by the Privy Council.

3024. Is Incest considered as a crime?—It is.

3025. Between what degrees of relationship can Incest be committed?—I think in the direct line.

3026. In the collateral line, between brother and sister, also?—Yes: it might go to the case of niece and uncle; but I know of no case of it.

3027. How would a case of Incest be punishable now?—I suppose, if it were in the direct line, it would be death. There was a case where a step-father was accused of incest with his step-daughter.

*The entry of the case was read as follows.*

"Thomas John Beaugie, vers lequel prise de corps fut décernée par acte de l'an 1823, le 25e jour de Septembre, émané sur un Rapport du connétable de la paroisse de St. Martin, exposant que, en conséquence d'une information de Philippe Le Gallais, Ecuyer, tuteur des enfans de feu le Révérend Charles Le Touzel, que Caroline Le Touzel et Eliza Le Touzel, deux de ses pupilles, étaient enceintes à Mr. Thomas John Beaugie, leur beau père, il avoit fait des récherches pour s'assurer de la personne du dit Beaugie, mais qu'il n'avoit pu le trouver; le tout selon que plus au long est contenu au dit Rapport: et le dit Thomas John Beaugie, sous accusation d'avoir séduit Caroline Le Touzel et Elizabeth Margueritte Le Touzel, filles mineures du dit feu le Réverénd Charles le Touzel, et de Dlle. Marie Barbenson, sa femme en premières noces, la dite Barbeuson etant, au temps de la dite séduction, femme du dit Beaugie, et d'avoir, le dit Thomas John Beaugie, eu un commerce incestueux avec les dites Caroline Le Touzel and Elizabeth Marguerite Le Touzel, ses belles filles; le tout selon que plus au long est contenu aux actes en date de l'an 1823, le 25e jour de Septembre et du 14me Juin, 1825, convenu à l'instance du Procureur Général du Roi pour ouir le Rapport des hommes de l'enditement de la paroisse de St. Martin sur les dites accusations, Monsr. Philippe Godfray, connétable, Monsr. Philippe Nicolle, Monsr. George Asplet, Mr. George Payn, Mr. Phil Messervy, Mr. Timothée Mourant, Mr. Charles Le Boutillier, Mr. Jean Messervy, Jun., Mr. George Picot, Mr. Edouard Elie Le Sauteur, Mr. Phil. Billot, Mr. Phil. Du Fresne, Junr., et Mr. George Vardon, Junr., actionnés par le dit Sieur Procureur Général du Roi, pour passer comme hommes d'enditement à la charge au décharge du dit Thomas John Beaugie sur les dites accusations. L'accusation a été lue au dit prisonnier; et il a sur ce plaidé et fait sa déclaration, qui a été rédigé par écrit et logée au Greffe. Lecture a étè donnée des dépositions des témoins ci-devant rédigées par écrit et logées au Greffe, et des autres pièces de la procédure. Le dit prisonnier a été entendu en sa défense par le moyen de son avocat; et le Procureur Général du Roi a été sur ce oui. Les hommes de l'enditement se sont retirés avec les pièces de la procédure pour conférer dans le particulier, et, étant de retour et à un accord, ils ont fait leur Rapport à la justice par le moyen du dit Monsr. Philippe Godfray, qu'ils croient, en leurs consciences, que le dit Thomas John Beaugie est plutôt coupable qu'innocent du crime dout il est accusé. Ensuit de quoi le dit Thomas John Beaugie s'étant soumis à la justice, la Cour, conformément aux conclusions du dit Sieur Procureur Général du Roi, a condamné et condamne le dit Thomas John Beaugie à subir un emprisonnement de six mois, dont les derniers huit jours seront au pain et à l'eau, à une amende de cinquante livres sterling envers le Roi, et aux frais, et, après l'expiration du dit emprisonnement, il demeure banni de cette Ile pour le terme de cinq ans, avec défense d'y retourner durant le dit terme sur une plus grande peine."

3028. You think, in strictness, Incest would be punished, if in the direct line, by death?—Yes; but it is very unlikely that it would be so.

* By Ordinances of the Royal Commissioners under Queen Elizabeth, dated 3rd April, 1591, Article 32, it is provided that adultery, be it man or woman, who shall be thereof convicted, shall be imprisoned for the space of three weeks, and during that time shall be publicly punished in the market-place, by being put in the stocks from nine of the clock in the morning to three in the afternoon, and shall afterwards be whipped to the effusion of blood; provided nevertheless that if it should happen to any of the members of the States, or any other person of reputation, it shall rest in the power and discretion of justice to commute the corporal punishment into a pecuniary fine, which shall amount to the value of one year's income of such a person, payable in two different years, by equal portions: and forasmuch as several have gone unpunished for want of due order having been observed in the convicting of them, it is ordered that from henceforth, when any person shall be legally accused, and not having been taken in the fact, shall not confess, such person shall be formally indicted according to the usual form of enditements; that if thereby found guilty, he doth submit for his acquittal upon a lawful enquête of 24 men; or otherwise he shall suffer close imprisonment for the full space of six months. And as to fornicators they shall be punished by the stocks on several market days, or by fine at the discretion of the bailly and justice, save notwithstanding in regard to such lewd women as shall be reputed public strumpets, or who have been before punished who shall be whipped, and if they continue shall be for ever banished from the said island.

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3029. And in cases not in the direct line?—Yes; by imprisonment.

3030. Mr. *Marett.* It appears from "Terrien," p. 482, that a person was found guilty of Adultery upon the accusation of a third party, and convicted. He afterwards appealed, and was acquitted; and his costs were granted him against the promoteur. I should consider that that would be in some measure binding upon us now. The index says, "Adultérie en Normandie, non punissable par la coustume s'il n'y a plainte formée par l'une des parties mariées."

3031. Is Usury punishable as a crime?—Yes; by the code of 1771, at p. 128.

3032. What is the legal interest?—Five per cent.

3033. Has there been a recent case of Usury?—There has been one instance, in which the Court annulled the debt.

3034. (To Mr. *Le Breton.*) The Commissioners understand that a Report was presented, in the case of some proceedings, by a Mr. Brown against Falle, for embezzlement. What was done upon it?—I refused to enter the Report. I have not all the circumstances in my mind now; but I know that I considered it well. Mr. Le Sueur wished me to enter a Report, and pressed me very much to enter a Report; but, on a consideration of the case, and examining into the circumstances, I thought it was a civil matter, and not a criminal case.

3035. Mr. *Le Sueur.* I thought there was embezzlement in that case; and I suppose it will appear so on the face of the report.

*The Report was read as follows.*

A Messire Jean De Veulle, chevalier, Bailli, et à Messieurs les Jurés Justiciers de la Cour Royale de l'Ile de Jersey.

Lundi 1e Novembre 1841, Mr. Robert Brown me porta plainte, que Lundi, le 25 Octobre précédent, il avait chargé Mr. Elie Falle, qui était à son emploi, de recevoir plusieurs sommes d'argent, afin d'acquitter des arrérages de rentes que devait le dit sieur Brown, et qui devaient être payées au bureau de Hugh Godfray, Ecr., qu'en conséquence le dit Mr. Elie Falle avait reçu pour le compte du dit sieur Brown les sommes suivantes, savoir:

| | £ | *s.* | *d.* |
|---|---|---|---|
| De Mr. Raffesty . . . . . | 0 | 3 | 3 |
| De Mr. Pingelly . . . . . | 0 | 10 | 0 |
| De Mr. Gédions Ahier . . . . | 1 | 6 | 0 |
| De Phil. Gruchy . . . . . | 3 | 5 | 0 |
| De Mr. Brown . . . . . | 10 | 1 | 8 |
| De Mr. Ed. Esnouf . . . . . | 7 | 12 | 5½ |
| De Mr. Wm. Silby . . . . . | 0 | 3 | 4 |
| De Miss De Mirtre . . . . . | 19 | 10 | 0 |
| De Mr. Leigh . . . . . | 20 | 0 | 0 |
| De Madame Gompertz . . . . | 20 | 0 | |
| De Rev. Jean Mallet . . . . | 20 | 0 | 0 |
| De John Quérée . . . . . | 5 | 0 | 0 |
| De Mr. John Ereaux . . . . | 7 | 10 | 0 |
| De Mr. Thomas . . . . . | 1 | 0 | 0 |
| Sur un billet de Geo. Quérée . . | 20 | 14 | 7 |
| Sur un id. de Phil. De la Marre . | 50 | 7 | 3 |

Ce qui avec une somme de 4*l.* 5*s.* 2*d.* sterling que le dit sieur Falle avait précédemment entre mains faisait la somme de 191*l.* 8*s.* 8½*d.* ancien cours, égale à celle de cent soixante seize livres quatorze chelins deux pennys un farthing monnaie de la Grande Bretagne; que le dit sieur Falle prit les livres de quittances de Mr. Brown pour prendre des reçus des rentes qu'il allait payer, mais il les rapporta tôt après, et, Samedi le 30 Octobre, il dit qu'il n'avait pu payer ces rentes, le compte des frais n'étant pas préparé, mais qu'il les paierait le Lundi suivant. Dans la matinée de ce dernier jour Mr. Robert Brown s'étant aperçu que le dit Mr. Elie Falle, qui tenait une partie de ses livres, avait fait, le Vendredi et le Samedi précédents, diverses entrées qu'il avait antidatées, au crédit de son propre compte, pour les années 1839, 1840 et 1841, et de plus qu'il s'était débité sans le consentement ou la connaisance du dit Mr. R. Brown d'une somme de 89*l.* 11*s.* 4*d.* stg. anciens cours, égale à celle de quatre vingt deux livres treize chelins six pennys stg. monnaie de la Grande Bretagne, comme reçue par lui du dit sieur Brown, et avait ainsi appliqué à son bénéfice partie de l'argent qu'il avait reçu et qu'il avait été chargé d'employer comme sus est dit, le dit Mr. Robert Brown me dit qu'il avait tout raison de croire que le dit Mr. Elie Falle voulait détourner à son profit partie de cet argent. Quelques jours après Mr. Robert Brown m'ayant confirmé cette plainte, et m'ayant informé que le dit sieur Elie Falle n'avait point payé les dites rentes, et qu'il refusait de rendre l'argent qu'il avait reçu, voulant retenir sur le montant diverses sommes qui ne lui étaient pas dues, je saisis le dit Mr. Elie Falle, en conséquence des faits ci-dessus rapportés. Samedi le 6 Novembre 1841, il me dit d'abord qu'il était tout prêt à me rendre l'argent qu'il avait reçu; que cet argent était à la campagne, mais qu'en allant au bureau de Hugh Godfray Ecr. il pourrait l'obtenir dans une dizaine de minutes. Le dit sieur Godfray, que Mr. Elie Falle avait envoyé chercher, étant arrivé, dit que le dit sieur Falle ne ferait pas cette chose, et qu'il resterait caution de le reproduire en Cour. En conséquence je pris le cautionnement du dit sieur Godfray de la reproduire toutes fois et quantes; et aujourd'hui je présente le dit Mr. Elie Falle en cour, afin qu'il en soit ordonné.

(Signé) P. Le Sueur, Cble. de St. Hélier.

Délivré en Cour Séante,
ce jour de Décembre, 1841.

3036. (To Mr. *Le Breton.*) Did you obtain any evidence beside what is on the face of the Report?—I applied for information. Mr. Le Sueur was then the advocate of Mr. Brown, and conducted his business as his law agent, and of course I was not astonished at his pressing for my entering a Report; but I thought, and I still think, that there was no reason to attribute

any dishonesty to Mr. Falle. Mr. Falle, I think, afterwards brought an action against Mr. Brown for a settlement of account, which is still pending, I believe.

3037. (Mr. *Godfray*, Advocate.)—The case is still pending as a civil cause before the Royal Court. Mr. Brown would not prosecute the cause, and it has been périmé, I think, twice.

3038. Are Mr. Brown or Mr. Falle party men?—Mr. Falle was Mr. Brown's clerk.

3038. *Mr. Brown.* I am no party man whatever.

3039. (To *Mr. Brown.*) Were you so then?—No. The greffier, just after the 29th of October, asked me for some rent, a rent of the same year that was due to him; I said, "Your son in law owes me three years' house rent, will you have the goodness to receive it of him?" He said, "No." I said, "Call next week and I will pay you your rent." Directly the greffier sends me a summons to court. The moment I saw what Judges were on the bench I was sure to be condemned, because these Godfrays will never let a cause come on unless the Judges are in their favour.

3040. Was this a civil case?—Yes. The next morning Mr. Hugh Godfray comes up and seizes my goods for rent, amounting to 145*l.* I said to my clerk, "What money have I here? I had so much." I said, "Go to such and such tenants and receive the remainder, and go and acquit the expenses of this rent." The Thursday he went. He said "I cannot ascertain the amount of the expenses, they are busy. I am to call tomorrow." That was Friday. On the Friday they put me off again. Mr. Falle told me that Mr. Hugh Godfray said it was not in their office, that it was in the greffier's office, and that he must go for the expenses. I said, "They are going to make an arrest on my goods, why do not you make haste and do it?" He said, "They have arranged that they shall not be touched so long as you pay it tomorrow."

3041. What the Commissioners wish to ascertain is this: did Mr. Falle deny to you his having received that money?—No.

3042. What right did he allege as entitling him not to give it you?—His excuse was, that he could not get the amonnt of the expenses which had been incurred.

3043. I understand your account to be, that he insisted upon claiming it to put it to his account, and you say he was not entitled to do so?—No; there was nothing due to him; he had been clerk to me for some time.

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Mr. *Charles De Ste. Croix* further examined.



3034. There are some tenures here, are there not, which oblige parties to perform services connected with the criminal law?—Yes.

3035. Will you state what they are?—There are estates in the parish of St. Martin's, St. Saviour's, and Grouville, which are obliged to furnish escorts for the security of prisoners.

3036. What is the technical phrase for that tenure?—Le service de garde.

3037. How many do those estates furnish now?—From 160 to 180.

3038. Do they in fact furnish them?—Yes; it is now limited to guarding prisoners from the Court to the prison, and back to the grande enquête, and to capital executions. They formerly did so when persons were whipped from the court-house door to the door of what was the old gaol; but that punishment has been done away with of late years.

3039. Has the number of those tenures accumulated?—Every tenant in St. Martin's, on the Queen's fief, owes certain service. It has also been extended to St. Saviour's and Grouville. Every estate owed one guard. If the estate was divided into five different tenancies, every tenancy owed one guard, which would make five. A court was held, and prisoners were detained in early times in the Castle of Mont Orgueil, the castle being situated in the parish of St. Martin.

3040. They have some civil privileges, I suppose?—Yes.

3041. Mr. *F. Godfray* (Advocate). Formerly the whole of the parishes furnished service of guard. How it has all come to fall upon St. Martin's parish I cannot understand.

3042. Is that an advantage or not?—A disadvantage; they receive nothing for it.

3043. Mr. *Charles De Ste. Croix.* The service is not very onerous; they only come a few at a time.

Adjourned to to-morrow at half-past ten o'Clock.

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*Saturday*, 19*th September*, 1846.



Mr. *Peter Le Sueur* further examined.

3044. I understood you to say, on a former day, that you thought some part of the objections to the present Police system, as regards the protection of life and property, might be met by the establishment of a night patrol?—Yes.

3045. Have you turned your attention to the source from which the payment for that might be provided?—Some portion from the States, I suppose, and a portion, perhaps, from the parish, by a rate or a tax upon houses.

3046. Have you turned your attention to the question, how far the extending that to the day would increase the expense?—I think it would increase it considerably; and at the same time the system would be very badly received by the inhabitants. With respect to a night-watch, it is true that some gentlemen have subscribed, and have a night-watch in their streets; but I am confident that in some cases it has been made a kind of speculation, and that persons who

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wanted to be employed as watchmen have given false alarms merely to get employment. As to the protection of property, some spouts were some time ago taken from the house of Messrs. Godfray and Gray, though one or two watchmen were walking up and down. There was another watchman on the pier when the door and part of the floor of a house were ripped up; and most of the things were found in the house occupied by one of the watchmen.

3047. You would say, probably, that the system of private watchmen is a very inefficient substitute for an organized Police?—Yes; and, as to having watchmen in every street, it is hardly possible, because this town is a very straggling town, and its extent is very large in proportion to its population. A few watchmen would patrol the principal streets, those in which the peace is more often interrupted.

3048. With the means of being summoned to the other streets, if required, by a proper organization?—Of course; but there is certainly a very strong feeling here against a paid Police. It would be a material alteration in our system. The Police must not be considered as exerting so much influence as is sometimes represented. The fact is, that now the Police in town is the stronger party in the parish assembly, and, I suppose, among persons that can be rated, and of course the other party must and does complain. In many of the parishes, however, the elections have been against the Police. The centeniers and constables have been elected against the majority of the Parish Assembly, of which the Police formed a portion. As to the influence of the Police of St. Helier's, it is not so much that the members of the Police have that influence; but the fact is that there are two parties in the Island. One party is composed of, or at least the leading men are, especially public functionaries holding important offices. The Attorney General, the Solicitor General, the Greffier of the Court, Mr. Hugh Godfray, the dénonciateur, a relation of his, Mr. François Godfray, advocate of the Court, who is also constable of St. Saviour's. They form a very compact and a very influential party; and it is not strange that in the election of Jurats people should prefer electing Jurats who are of the opposite party feeling, fearing to give to those gentlemen more influence, they having already so much in the offices which they hold.

3049. You would consider, probably, that this is essential to the existence of any powerful party?—Yes; but I should say that the dread of the other party now forms the strength of the Rose party. So that the fact, that there are so many Jurats who have been elected by Rose men, is not to be accounted for merely by the influence of the Police of St. Helier's.

3050. Most likely in St. Saviour's the Police would be of the Laurel party?—I am not acquainted with the local politics of the parish.

3051. Of course, the Commissioners' object is not to enquire into the merits of the parties, but distinctly to see whether there is a party for or against the Police, and, then, whether either party is powerful?—The influence which has been attributed to the Police is very considerable. The Police form part of the majority of the Parish Assembly in town; but they do not constitute that Assembly. I should add that there are only twenty eight persons in the Police of St. Helier's who are not Principaux, and that there are 376 Principaux altogether.

3052. Have you now the number of those who are Principaux, and who have been in the Police?—It would be impossible to ascertain that. Many gentlemen in town have been, many years back, members of the Police. Some of course, remain of the same party; others are of the opposite party.

3053. The complaint made is that the predominant party in every parish refuse to rate as Principaux their antagonists, whether the Police are Rose or Laurel, that their own party they rate as low as possible, so as just to make them Principaux, that their antagonists they rate as highly as possible?—Since the law does not give any power to the Parish Assemblies to ascertain what is the property of an individual, of course it gives a good deal of latitude. I am confident that, supposing the law was not altered, but that there were only Principaux in the Parish Assemblies, the rate would not be better made than it is now.

3054. Unless you got rid of party altogether?—Yes; which could hardly happen.

3055. Would not the influence of the Police, as a party, be the stronger, the smaller the parish?—I should think so. It would be stronger in the small parishes; and the more so that in the country parishes the Police are elected for seven years, while in St. Helier's it is only for four years. It would be a more permanent body.

3056. Would not the proportion of the Police to the Principaux also be greater in the small parishes?—Yes.

3057. I understood your answer just now to be, that you did not think the system was carried to the extent of just rating anybody they wish to vote at the lowest amount possible, while their antagonists were rated as high as possible; but is not that the tendency of the system?—That is almost entirely from party. As to the unjust apportionment of the rate in different parishes, it is not owing to the Police being members of the Parish Assembly, but owing to the bad state of the law.

3058. And to the influence of party?—Yes. Supposing the members of the Police were excluded entirely, the same state of things would exist. If the Police were the cause of all the arbitrary decisions of the Parish Assembly, we might exclude the Police, and everything would be right; but it is not so. It is very seldom that the Police is brought in contact with any persons who have taken any part in the political affairs of the island. It is more with the lower class, who are not rated.

3059. Now and then in cases of assault it happens, does not it?—Yes; it happens now and then in assault; but, of course, they are of very rare occurrence, and perhaps even would not occur so often if we had some law on Délits de la Presse. Persons here publish papers under fictitious names, or under the names of persons who have no property whatever, to screen themselves against actions for libels.

3060. They attack the Police, you think, from political motives?—Yes; they attack the Police,

and they attack every one. With respect to the affair of Mr. Le Cras, who had been assaulted by Mr. Du Jardin, which is referred to in the evidence of Friday, the 11th, when I produced the letters I did not recollect precisely the circumstances of the case. I have been since reminded that Mr. Du Jardin had committed an assault on Mr. Abraham Jones Le Cras, I suppose a very trifling assault; but that Mr. Le Cras, the son, had taken the law into his own hands, and had assaulted Mr. Du Jardin; that, being less powerful, I suppose, than his antagonist, he came off the worse; and, although he may have had some mark on the face, as he had first attacked Mr. Du Jardin, I did not think it necessary to enter a Report.

3061. When did you ascertain the fact of its having been the consequence of a previous assault by him?—At the time.

3062. From whom?—From Mr. Du Jardin. Since Friday, I have been reminded of it.

3063. Did you ascertain it after Mr. Weston Le Cras had applied to you?—Yes.

3064. You would think it necessary to make an enquiry into his statement, I suppose?—Yes.

3065. And, in consequence of making that enquiry, you learned from Mr. Du Jardin what you have named?—Yes.

3066. You stated that you considered it your duty to enquire into the collateral circumstances of the case?—Yes; and in some cases to allow the party to have recourse to another remedy, which is that of a remonstrance in Court. At the same time, I must observe that I could not be actuated by any party motives, as Mr. Le Cras then gave his support rather to the Rose party, and Mr. Du Jardin belonged rather to the Laurel party.

3067. The Commissioners were informed that, not only in a case of assault, but in every case, it is the duty of the constable not to act upon the complaint of the party, but, before he makes a Report, to inquire into the circumstances of the case from third persons?—It is the general rule, and the duty, I believe, of constables and centeniers. They have, in fact, a kind of magisterial authority, not, perhaps, to give any decision or judgment in the case, but, as far as the first investigation is concerned, to make such an investigation, which is subject, of course, to the control of the Attorney General, and also of the chief magistrate. It is especially mentioned in the oath of the constable and the centenier.

3068. That they are to take cognizance of the orders of the Bailly, the Lieutenant Governor, and the Justices?—Yes.

3069. Are the Commissioners right in supposing that it is not the duty of the constable to act upon the mere complaint of the party, but that it is his duty to exercise a discretion?—Yes; if he did not, as the information is not given upon oath, it might be very unsatisfactory and imprudent to take the *ex parte* statement of the complainant.

3070. Must not you in any case end in doing that?—It is much easier afterwards to know who is in the wrong, after having heard the two parties, than after having heard one. It was said, the other day, that formerly a person was never put in gaol without having the committal of a magistrate before he was taken down to the gaol. By referring to the prison books it will be ascertained that even the Attorney General formerly gave committals, and that he has given a great many. It is entered in the prison books, "by order of the Attorney General."

3071. Mr. *Le Breton.* I have never given any.

3072. Mr. *Le Sueur.* There are also cases where the Sheriff has put persons in gaol for an assault.

3073. About what date would that be?—In 1829. I see, by the prison books, that John Lynch was put in prison for an assault: "by whose order;" "by order of the Sheriff:" "trial;" "none:" "liberated;" "April 10:" "by the Sheriff." But, no doubt, there are other cases, as the Sheriff and the Dénonciateur are also peace-officers, and of course can arrest parties who disturb the public peace.

3074. *Deputy Vicomte.* The Deputy Vicomte and the Dénonciateur have the power of committing to gaol without the warrant of a magistrate.

3075. Are they peace-officers?—Yes.

3076. Mr. *Le Sueur.* I have seen the Deputy Vicomte act, in his public capacity, to suppress a riot; and he had called out the soldiers of the guard. I have also seen Mr. Hugh Godfray, the Dénonciateur, take a person who had committed a breach of the peace in the square.

3077. Does the Dénonciateur take an oath?

3078. Mr. *Hugh Godfray.* He takes the same oath as the Vicomte.

3079. Does the Deputy Vicomte take an oath?—Yes; the same oath.

3080. (To Mr. *Le Sueur.*) In fact, the Vicomte, the Deputy Vicomte and the Dénonciateur have committed to prison on their own authority?—They have committed to prison. In some cases, it appears by the prison books that they have obtained the sanction of a magistrate. I am not aware whether they consider that they are obliged to do so.

3081. (To the *Deputy Vicomte.*) Do you consider that you are required to apply to the Bailiff or to the Jurats, previously to committing a man to prison?—No; I consider that the Vicomte, the Deputy Vicomte and the Dénonciateur have a right to preserve the peace by putting persons violating it in prison.

3082. In this entry in the prison books, to which Mr. Le Sueur has referred us, it appears that they were also liberated by the Sheriff. Have the Vicomte, the Deputy Vicomte and the Dénonciateur also the power of releasing prisoners?—I should consider not. I should not consider, myself, that I had a right to liberate a person whom I had put in prison, without an Act of the Court.

3083. Mr. *Hugh Godfray.* Perhaps this particular case of Lynch was an Act of the Court. If the Vicomte or Dénonciateur arrests a person for a breach of the peace by an order of the

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Court, he may be entered in the books as lodged in gaol without any order. I should not think I had any right of imprisoning a person without immediately informing the chief magistrate of it.

3084. You would put him there of your own authority then, and afterwards inform the magistrate?—Yes. I may be situated quite the reverse of the Police. The constable and centeniers have twelve officers in the country and twenty four in town, whereas I have nobody to assist me.

3085. Mr. *Le Sueur.* The office of Dénonciateur being lucrative, it is very easy to get persons to assist him.

3086. Mr. *Chevalier.* On the 24th of August, 1839, I seized a person named Cambridge, and put him in gaol.

3087. Had you orders to put him in gaol from the Attorney General?—Yes, I had; and the Report mentioned it. He had been sent out of the island, and, I think, returned.

3088. Then a sentence of the Court had been passed against him?—Yes.

3089. (To Mr. *Le Sueur.*) Have you anything else to add?—I wish to contradict one or two statements which have been made by Mr. Charles Romeril. He asserted that the Police have a public fund at their disposal. There is no such fund. The only fund which the Police have is a voluntary fine of one shilling, levied upon such of the Police as do not attend the monthly meeting. That may produce perhaps four or five pounds a year, which is never applied to any party purposes. As to Mr. Romeril having asked centenier Du Parcq to arrest the young Chevaliers, I do not think it likely that Mr. Romeril intended to bring the affair before the Court on a criminal action, but that he intended to bring a civil action, or at least a cause en ajonction, against them, so as to claim damages. There could have been no other motive for his going to the Dean or the Recteur to get the baptismal extracts of the young Chevaliers' names, which he states in his deposition that he did.

3090. You think that his having taken steps, the only object of which was to bring a cause en ajonction, is inconsistent with his having about the same time wanted an arrest?—Yes. Mr. Chevalier, I believe, has a list of Reports which have not been proceeded with by the Attorney General. I think, when a Report is once before the Court, it ought not to be in the power of any one to stop it. A Report, I know, was presented against Le Gendre several years ago.

*The following list was put in by Mr. Chevalier :—*

"1837.—Sept. 18. Pierre Le Gendre et Marie Le Noble, sa femme.
1839.—Aout 24. John Cambridge.
1839.—Oct. 2. James Cormer.
1840.—Mar. 5. William Quint.
1840.—Aout 4. John Hansford.
1841.—Aout 3. John Lee.
1844.—Mar 19. George Phillippe.
1844.—Aout 24. William Turner.
1845.—Aout 7. Gallichan Laffoley, Blamfried, et autres, &c."

3091. (To Mr. *Chevalier.*) Those are Reports, furnished to the Court by the constable, upon which no prosecution has followed by the Procureur General?—Yes; the Report in Lee's case was presented; some of the evidence was heard; and the cause then was not proceeded with.

3092. Mr. *Le Sueur.* I think it is very improper that that discretion should rest with the Attorney General of stopping cases in that way. I think that, at all events, he ought to inform the Court of it; and it might then be done by an Act of the Court.

3093. Have you turned your attention to the best way of arranging the stopping of cases?—I think it is better that all cases should be brought forward by the Attorney General without choice.

3094. You would not, probably, substitute our Grand Jury system?—I think it would not be consistent with the opinion of any one in the island. I think, at the same time, there ought to be some proceeding well established, by which a party having a complaint against the Police or against the Attorney General for not taking up a criminal proceeding, or bringing a criminal action, might obtain redress.

3095. Mr. *F. Godfray* (Advocate). He has a civil remedy.

3096. Mr. *Le Sueur.* If a person has no right to damages, of what use is a civil remedy? When I stated, the other day, that the Court would have the power of calling on the Attorney General to go on with the prosecution, the two officers of the Crown differed upon the point. I think that that, at all events, ought to be cleared up.

3097. Will you give the Commissioners an account of the nature of a Cause en Ajonction?—There are two proceedings, essentially different, in a Cause en Ajonction. The first proceeding is instituted by what we call a bill, or summons, which is signed by the Attorney General. This form of action is generally resorted to for Slander.

3098. In Slander do you include Libel?—No; defamation by words. In that case, when the defendant appears before the Court he puts in his plea, and either denies or admits the facts which are alleged in the bill, and the case is sent to proof.

3099. Does it then go on like other civil cases?—Yes; except that those cases are not put upon the list of civil cases, and the Attorney General is a party to them.

3100. They take precedence, do they?—Yes; they take precedence of the others.

3101. Are those proceedings a matter of right, so that any party may commence an action of this kind?—Yes.

3102. Any person wishing to have an action for Slander against another has a right to

institute proceedings?—Yes; no consent is necessary but that of the Attorney General, who signs the bill en ajonction; and he always signs as a matter of course.

3103. Could he refuse to sign the bill?—That is regulated by an Order in Council.

*The following Orders in Council are delivered in.*

3104. "At the Court at St. James's, the 28th day of March, 1771. Present, The King's Most Excellent Majesty, Duke of Ancaster, Earl of Bristol, Lord Chamberlain, Viscount Falmouth, Earl of Rochford, Viscount Hichinbrook.

"Whereas there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the affairs of Jersey and Guernsey, dated the 26th of this instant, proposing, amongst other things, that, in regard His Majesty hath now been pleased to appoint a King's Advocate for the Island of Jersey, who, as well as the King's Procureur, is not to have the power of appointing deputies as heretofore, an amendment and explanation may be made of His late Majesty's Orders in Council of the 23rd of November 1749, and 31st of October 1751, concerning those offices, and His Majesty, taking the said Report into consideration, is pleased, with the advice of His Privy Council, to approve of what is therein proposed, and to order, as it is hereby ordered: That, for the future, if at any time the Procureur shall decline the undertaking an adjunct cause, the King's Advocate be, and he is hereby authorized, in such case, without any further formalities, to undertake such cause for the party complaining; also that, whenever the King's Procureur shall have undertaken an adjunct cause, or upon the King's Procureur having declined it and the King's Advocate having thereupon undertaken it, then, in either of the said cases, the King's Procureur or King's Advocate be generally dispensed with, and be understood in law to be dispensed with by His Majesty, and be capable, as any other counsel, *ipso facto*, and without further formalities, to act for the defendant in the same manner as if he were specially licensed by His Majesty so to do: And His Majesty doth hereby further order: That, in the absence of the King's Procureur out of the island, or being hindered by sickness, or being otherwise unable to act officially, the King's Advocate shall execute the office of the King's Procureur, *pro hâc vice*, and that un Stipulant l'Office de l'Avocat du Roi, or un Avocat Délégué, shall be appointed by the Royal Court and assigned to supply and execute the office, and so in the case of absence or inability of the King's Advocate. Whereof the Bailiff and Jurates of His Majesty's Royal Court of the Island of Jersey, His Majesty's Procureur and Advocate, and all others whom it may concern, are to take notice and govern themselves accordingly."

3105. "At the Court at St. James's, the 23rd day of November, 1749. Present, The King's Most Excellent Majesty, Lord President, Lord Chamberlain, Duke of Richmond, Duke of Bedford, Duke of Newcastle, Earl of Pembroke, Earl of Halifax, Mr. Vice Chamberlain, George Dodington, Esq., Sir John Ligonier, Henry Legge, Esq.

"Whereas there was this day read at the Board a Report made by the Right Honourable the Lords of the Committee of Council for the affairs of Jersey and Guernsey, dated the 19th of June last, upon hearing the petition of Appeal and complaint of Charles Lemprière, his Majesty's Advocate General of the Island of Jersey, from a sentence passed in the Royal Court of the said Island on the 20th of February 1741, upon an action brought in the said Royal Court against the petitioner by John Le Hardy, Esq., his Majesty's Procureur of that Island, in relation to the rights of their respective offices, and likewise upon hearing the petition and Appeal of the said John Le Hardy, Esq., his Majesty's Procureur Général in the said Island of Jersey, complaining also of the said sentence: His Majesty, taking the said Report into his Royal consideration, was pleased, with the advice of his Privy Council, to approve thereof; and, agreeable to what is therein proposed, to order, as it is hereby ordered: That the said sentence of the Royal Court of Jersey, of the 20th of February 1741, be reversed. And his Majesty doth hereby declare that the Procureur is the superior officer, and the proper person to commence and carry on all criminal prosecutions, and all suits relating to the King's revenue, and all other suits in which the King's interest is concerned; That he, likewise, is the proper person to be made a party in all adjunct causes; And that, when a suit is commenced in the name of the King's Procureur, or he is made a party to an adjunct cause, the King's Advocate cannot interpose in such suit without the express direction of the King's Procureur, except in case of the Procureur's death before the determination of such suit: But that, in case of a vacancy of the office of Procureur by death or otherwise, or when the Procureur is absent from the Island, or where the Procureur is himself a party to the suit, the Advocate may commence a criminal suit, or a suit relating to the revenue, or any other suit in which the King's interest is concerned, in his own name, or may be made a party to an adjunct cause; Or, if the Procureur refuses to permit his name to be made use of in any of the said suits, and the Royal Court in Jersey are of opinion that he ought to have permitted his name to be made use of, the Royal Court may order such suit to be brought in the name of the Advocate; And that, when a suit is brought by the Advocate in any of the cases before mentioned, the Procureur shall not enter a *nolle prosequi*, or any ways interpose in any such suit: And His Majesty is hereby pleased further to declare that, in regard the Advocate's patent is in the same words with that of the Procureur, and it appears he has exercised the same powers in some instances; if, therefore, any criminal prosecution or any suit be brought in the name of the Advocate relating to the revenue, or in which the King's interest is concerned, or he be a party in an adjunct cause, the defendant shall not insist that such prosecution or suit was wrongfully brought, but that the Procureur may enter a *nolle prosequi*, and interpose in the carrying on such suit; but as, in case of a difference between the King's Procureur and Advocate, the King's interest may suffer very much if the King's Procureur should exercise this power in an arbitrary manner, his Majesty doth therefore hereby order that, during the continuance of the present Procureur and Advocate, or either of them, in their respective

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offices, the Procureur do not enter any *nolle prosequi*, nor interpose in any suit brought in the name of the Advocate, without the leave of the Royal Court of Jersey; whereof the Bailiff and Jurates of His Majesty's Royal Court of the Island of Jersey, His Majesty's said Procureur and Advocate, and all others whom it may concern, are to take notice and govern themselves accordingly."

3106. The case, you say, goes on like a civil action?—Yes, except that it has the privilege of precedence of other causes.

3107. Is it heard before the smaller number or before the full Court?—It is heard before the smaller number; and, if the damages exceed five pounds, there is an appeal to the full Court on the damages.

3108. Is the appeal only as to damages?—Yes; and as to the merits of the case also. There is an appeal on the whole case, if the fine awarded by the Court exceeds five pounds.

3109. Is the Solicitor General at all a party to those causes?—The Solicitor General is a party in the absence of the Attorney General, and, I suppose, also in some cases where the Attorney General might refuse to sign the bill. The Attorney General may be retained by the party who brings the party before the Court; so that he may act both in his public capacity and as an advocate.

3110. He may be retained by what we should call the plaintiff?—Yes.

3111. Is it necessary that the plaintiff should retain the Attorney General to act as his advocate?—He may retain the Attorney General or the Solicitor General, or any of the advocates of the Bar.

3112. Are you confining your evidence at this moment to the species of the cause en ajonction which commences by a summons?—It applies also to that which is commenced by a remontrance.

3113. When there is a cause en ajonction, is the plaintiff compelled to have the Attorney General or the Solicitor General to plead his cause?—No; he may retain either of the other Advocates of the Bar; and then the Attorney General acts only in his public capacity.

3114. He still acts in the cause?—Yes.

3115. The Attorney General, in the case of the plaintiff retaining another advocate, acts only for the public or for the Crown?—Yes.

3116. Supposing no other advocate is retained, he has to combine the cause of the party bringing the action with his duties as a public prosecutor?—Yes: but, at the same time, I suppose the Attorney General has refused to act for plaintiffs during many years; at least I do not recollect any late instance in which the Attorney General has acted in both capacities.

3117. Are witnesses heard?—Yes. If the defendant denies the fact, the cause is sent to proof, and witnesses are called by both parties; but the defendant, if he wishes to become plaintiff, or to hasten the proceedings, must of course pay the fees of the Attorney General for signing the summons.

3118. If the plaintiff does not bring on the case after having entered his bill, the defendant is at liberty to proceed, if he pays the Attorney General his fees of office?—Yes, for signing the summons.

3119. We are supposing that a cause has been commenced by a summons being signed?—A fresh summons is necessary for each time the cause comes into Court.

3120. If the plaintiff does not proceed with the cause, the defendant is at liberty to procure a fresh summons from the Attorney General, and go on with it?—Yes.

3121. Supposing the cause to go on to proof, witnesses are heard on both sides. Who is heard first?—The plaintiff is heard first; and then the defendant; then the plaintiff again; and then the defendant; and afterwards the representative of the Crown: so that the plaintiff and defendant would be heard twice.

3122. There are five speeches?—Yes, and not always limited to that number.

3123. What is the object of the plaintiff and defendant being twice heard in this particular case?—That is in virtue of the law.

3124. Mr. *Le Breton.* It is so in all civil cases.

3125. (To Mr. *Le Sueur.*) After the Court have decided upon proof of the fact, is the Attorney General heard as to what the amount of the fine or the damages shall be?—He is heard before the Court has given any opinion upon the merits of the case, or any judgment. As soon as the counsel for the defendant has been heard last, the Attorney General sums up the cause, and draws his conclusions; and he states whether the defendant or the plaintiff are in the right, and states also what is the amount of the fine which the defendant ought to pay. If the plaintiff has not sufficient grounds for instituting the action, he is condemned to the "ajonction frivole," for having, without sufficient cause, called on the Attorney General to interfere.

3126. For having called in aid the Crown process without sufficient ground?—Yes.

3127. Is that ajonction frivole a fixed sum, or does it depend upon circumstances, or is it the costs of the proceeding?—It is a fixed sum.

3128. What is the amount of it?—Twelve and sixpence.

3129. Has he also to pay the costs of the other party in that case?—Yes, including the fees of the Attorney General, but not the fees of the counsel.

3130. The fees of Court and the fees of the Attorney General he pays?—Yes.

3131. The expenses of the witnesses?—Yes; all expenses, with the exception of the fees of the counsel or advocates and the hommes d'affaires.

3132. In case a plaintiff succeeded in his cause en ajonction, would he be entitled to costs against the defendant?—Yes; he recovers the same costs, and also damages.

3133. Mr. *F. Godfray* (Advocate). The amount of the fine is in the discretion of the Court.

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3134. Mr. *Le Sueur*. The Court fix the amount of fine to the Queen and the damages to the party.

3135. In a proceeding en ajonction by way of remontrance, how does that differ from a proceeding by bill?—The plaintiff presents in the first place a remontrance or petition to the Court, stating the case and the ground of action.

3136. In civil proceedings, is the first proceeding always called a remontrance?—A remontrance is a petition addressed to the Court, either to the inferior Court or to the full Court.

3137. Is the word remontrance confined to a cause en ajonction?—No; it is also the word used in a good many civil actions.

3138. The remontrance being presented, what is the next step?—The party prays the Court for the ajonction of the Attorney General; and the Court grants or refuses, after having heard the Attorney General as to whether there are sufficient grounds.

3139. Is the first mode of proceeding by ajonction confined to Slander or does it extend to other civil cases?—There are a few cases, where an Assault has been committed.

3140. Mr. *Dupré*. There are a variety of other cases to which it extends in practice.

3141. Is an offence by Words a necessary part of the proceeding?—I remember none without a Slander.

3142. Where the proceeding is by remontrance, what are the causes of injury which can be redressed in that way?—They are generally brought for Assaults, and also for Libel against a public functionary.

3143. A written Libel?—Yes.

3144. Would language threatening to do a person injury be a proper subject for a cause en ajonction?—No; there must be an Assault; and it must be sufficiently violent; or there must have been some ill treatment; otherwise the Court would not grant the ajonction.

3145. Supposing a man were to spit in another's face, would that be a sufficient Assault for a cause en ajonction?—I think not.

3146. There must be a beating, must there?—There must be a beating.

3147. (To Mr. *Le Sueur*). The ajonction of the Attorney General having been obtained, on application of the party, by order of the Court, what follows? Are the proceedings exactly the same as in the other case?—No; the Court, on the conclusions of the Attorney General, orders the party to be arrested by the officiers de justice; and the defendant must give bail for his appearance in Court, or go to Gaol.

3148. Does the Court fix the amonnt of bail upon the representation of the Attorney General?—Not at all; merely on the plaintiff claiming damages to a certain amount.

3149. Does the amount of bail which the Court requires depend upon the amount of damages claimed by the plaintiff?—The Court does not go into the question of bail, but only orders the party to be arrested by the officer. Then, of course, the party would take bail to the amount of the damages claimed, The following is the form of bail. "A. B. et C. D., lequel est demeuré caution de représenter la personne du défendeur et répondre à l'action toutes fois, et quantes, sur peine de répondre du jugé." The bail is generally given for such an amount of damages as the Court may award.

3150. If a party chose to claim very large damages, he could not increase the bail to that amount, the bail given being according to what the Court may award?—No.

3151. It is a security to produce the party in Court, as often as he is required, and to pay such sum as the Court shall award against him?—Yes.

3152. What would be the result, supposing, during the progress of the cause, the defendant did not come to Court?—The cause goes on in his absence; but of course he is responsible for the judgment of the Court.

3153. Does the cause then go on in the same way as the other cause en ajonction which you describe where the proceedings are by bill?—Yes: these causes also are privileged.

3154. Has the defendant the same power of pressing the cause on?—Yes.

3155. And in all other respects the proceedings are precisely the same?—Yes, entirely.

3156. Where the proceedings are by remontrance, does that take place also before the inferior number in the first instance?—Yes.

3157. With the same right of appeal, on the same conditions?—Yes.

3158. The only difference is the mode of procedure, and the fact of bail being required in one case and not in the other?—Yes; and that the party is ordered to be arrested in one case and in the other is brought up by summons of the Court.

3159. (To Mr. *Dupré*). You stated that the cause en ajonction by bill applied to other complaints than those Mr. Le Sueur referred to?—I have seen it in cases of Assault.

3160. You limited your former answer, as to the proceedings by remontrance, to Libel against a public functionary. Would a Libel against an individual be a ground for a cause en ajonction?—I know no case where a cause has been brought on as cause en ajonction by a remontrance in such a case.

3161. Slander against a private individual can be made a ground of a cause en ajonction by bill?—Yes. Cases for Libel are generally brought without the ajonction of the Attorney General at all.

3162. They are generally brought by civil action?—Yes.

3163. For words spoken, could a person bring a civil action?—Yes, without asking the ajonction of the Attorney General. Mr. Pipon thinks that a Libel on a private person may be a ground for a cause en ajonction.

3164. Do you agree with that?—I have not seen it done.

3165. Does any reason occur to you why a remontrance should be a proper proceeding in such a case?—For words spoken, the Attorney General may be brought as a party. It appears strange, therefore, that for even stronger words written he should not be made a party.

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3166. Mr. *Hammoud.* In the case of a cause en ajonction by bill the party is not arrested.

3167. Mr. *Dupre.* Formerly the practice was that there was no saisie after an ajonction, except in cases of Assault.

3168. Mr. *Hammond.* I have never known a case of that kind in my practice. Wherever the Court have decided that the ajonction shall be allowed, and the Attorney General is a party, it is the Attorney General who moves the proceeding; and I have always seen it ordered that such a party should be arrested; whereas if it is by a bill there is no such proceeding.

3169. Mr. *F. Godfray* (Advocate). In a cause en ajonction by summons, there can be no appeal for the plaintiff, because he does not state the damages which he claims, but leaves it to the discretion of the Court; while, if it is by remontrance or petition, he claims certain damages, and, if those are not granted, he may appeal. On the appeal, the Attorney General is no party to the suit.

3170. Supposing, in an ajonction by way of bill, the decision is that the plaintiff has no ground of action at all?—Then he cannot appeal.

3171. The distinction which you make as to the sum not being named would hardly bear out that view?—If a plaintiff has asked no particular damages, he cannot appeal under 5*l.* I think a person who claims an ajonction for a Libel by remontrance ought to obtain it.

3172. As matter of principle?—Yes.

3173. (To Mr. *Le Sueur.*) What are the particular advantages of a cause en ajonction in contradistinction from a civil action?—It has the privilege of not being put on the list of causes, and therefore of coming much sooner before the Court; but the expenses of a cause en ajonction are greater than those of common causes.

3174. Is the getting precedence the only advantage?—I do not know that there is any other advantage, except that the defendant may be condemned to pay a fine.

3175. There would also be the advantage of neutralizing one of the Crown Officers?—Yes; and sometimes having the Crown Officer on your side, in the case of the Attorney General acting for the plaintiff, which has not lately been the practice.

3176. Would it apply equally to a remontrance en ajonction as to a bill, that the Attorney General has refused to act in both cases?—Yes.

3177. I presume this is a very lucrative part of the practice of the Crown Officers?—Not very lucrative; but the costs are sometimes very heavy for the parties. Formerly the causes en ajonction were more numerous than they are now. Women would quarrel together in the market, or such places, and very often have recourse to a bill en ajonction.

3178. The Procureur Général having by bill or remontrance come into Court, has the defendant a power of retaining the Avocat Général?—Yes.

3179. The Procureur Général gets no fees for ordinary prosecutions, does he?—No: if the defendant is condemned to pay costs, and has the means to pay them, the Attorney General gets his fees.

3180. The Crown pays him nothing except his salary?—There are some cases in which the costs are always paid. In infringing an Act of the States, for instance.

3181. You say, where a party is a solvent person, and is ordered to pay costs, part of those costs is ajudged to the Attorney General?—Yes.

3182. Mr. *F. Godfray* (Advocate). In criminal cases a defendant never pays costs.

3183. Mr. *Le Sueur.* Not in cases which go before a Jury. In all other cases they do. It extends to all cases that do not go before an enditement.

3184. Who fixes the amount of the costs to the Procureur Général?—Himself, I suppose: he fixes his charges according to practice.

3185. Is there any scale of charges?—There is none established by a law.

3186. If a party who was a rich man in this Island were convicted, might the Procureur Général say, "My fees are one thousand guineas"?—We have never heard of fees to that amount in this Island.

3187. Is there a scale of fees?—There is a scale, which is not always adhered to, to a pound or two.

3188. There is a well known scale which cannot be exceeded, is there?—There is a scale.

3189. Mr. *F. Godfray* (Advocate). I suppose the Procureur Général does not get twenty-five pounds for causes en ajonction in a year.

3190. (To Mr. *Le Sueur.*) Is there any officer whose business it is to perform the duty which we call taxing costs?—The Court may tax all accounts.

3191. Does it do so by its officers?—No: if a person is actioned to pay costs, and he says the costs are extravagant, the Court may go through the items and reduce the costs.

3192. Mr. *Evans.* Cases that have arisen have generally been upon the Greffier's charges; they are established. I think the Greffier's charges are a general model of the charges of the hommes d'affaires.

3193. (To Mr. *Le Breton.*) Do you agree to what Mr. Godfray has stated as to the value of causes en ajonction to the Procureur Général?—Of late the amount has not been very great; whether it is 25*l.* or 30*l.* I cannot say. I think they may have amounted to 50*l.* in some years; but certainly not of late years.

3194. Mr. *Hugh Godfray.* I think there is a fixed scale of expenses.

3195. You are an officer of the Court, are you not?—Yes. The same charges have been made for the Attorney General as for the advocates in the cause, except the signature of the summonses, which are paid extra.

3196. Is there a fixed scale of the charges of an advocate?—It is fixed by practice. An écrivain may draw out the charges without reference to the advocate.

Mr. *John Seward* examined.

Mr. John Seward. 19 September, 1846.

3197. Have you anything to say to the Commissioners?—I understand Mr. Le Cras stated that the Police did not come to bind me down to keep the peace. Mr. Du Parcq came twice; and Mr. Le Sueur the constable came twice.

3198. How do you know they came?—I heard them come. I was not at home when Mr. Du Parcq first came; but I recollect Mr. Le Sueur came.

3199. You remember Mr. Du Parcq coming once, and Mr. Le Sueur once?—Mr. Le Sueur told Miss Gore, my housekeeper, that he was not going to put me to gaol, but I was to get some one to be surety for me. I took Mr. Copp; Mr. Hugh Godfray also sent to me.

3200. The Dénonciateur?—Yes; I went to him next morning, and took Mr. Copp as a security. I was then served with a remontrance by Mr. Godfray on the account of Mr. Le Cras.

3201. Mr. Copp became your security, did he?—He did.

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Mr. *David Bromer*, examined.

Mr. David Bromer.

3202. Have you any thing to say to the Commissioners?—A person named Ariel was taken up criminally for causing a disturbance in the street and sent to gaol, where he remained. When presented to the Court, it was decided that he was of insane mind. The consequence was that his relations came over and wished to dispose of his property; when the property could not be disposed of till Mr. Le Sueur's fees, both for defending him and a Mrs. Fagg, were discharged, on the ground that, without the question of legality being entered into, if he did not pay them the Bailiff would suspend the sale of the property.

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Mr. *Charles De Ste. Croix* examined.

Mr. Charles De Ste Croix.

3203. Do you deliver into the Commissioners some returns?—I do *(producing the same)*. It is a statement of the number of persons confined in Her Majesty's gaol, Jersey, under accusation of crimes and misdemeanours, from the 1st of January, 1836, to September in the present year, specifying the date of their confinement and discharge, the age and county of each offender, and distinguishing the nature of the offence, the offenders dealt with and discharged by the police, those who submitted in the first instance, those dealt with by the Court without a jury, those tried before the enditement or petty jury, those tried by the grand enquête, and the acquittals and punishments.

3204. Have you examined those carefully?—I have. There may be some inaccuracies; but substantially they are correct, for they were made from the prison books and compared with the books of the Court.

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*John Le Couteur*, Esq., Vicomte, further examined.

John Le Couteur, Esq.

3205. What are the fees in the case of a coroner's inquest?—5*l*. 12*s*. 6*d*. are the whole of the costs in the case of an inquest. The paper which I produce will show the sum.

(*The same was produced and is as follows.*)

*Mémoire des frais pour une Levée de Corps.*

| | £. | *s*. | *d*. |
|---|---|---|---|
| Préparation et écriture d'un Ordre pour la levée de Corps de ——— . | 0 | 5 | 6 |
| Payé au Bailli signature de idem . . . . . . | 0 | 2 | 0 |
| Vacations du Dté. Vicomte á tenir la dite levée de Corps . . . | 1 | 0 | 0 |
| Au Procureur Général de la Reine ses honoraires pour attce à idem . | 1 | 0 | 0 |
| Au Dté Vicomte préparation et écrit. du Rapport et vacations à la Cour à le présenter . . . . . | 0 | 11 | 0 |
| Au Procr. Génl. de la Reine ses honoraires pour idem . . . | 0 | 11 | 0 |
| A frais de l'acte rapport confirmé . . . . . | 0 | 10 | 6 |
| Payé aux hommes de l'enquête leurs honoraires . . . . | 1 | 12 | 6 |
| Jersey Currency . . . | 5 | 12 | 6 |
| British . . . . | 5 | 3 | 10 |

3206. How do you tell whether a person can pay or not?—They are pretty well known.

3207. Do not you think that, an Inquisition being always a very unpleasant thing, it is extremely hard to make the representative or family pay the expenses of a coroner's inquest?—Certainly. It is intended that it should be otherwise, by a regulation which is under consideration.

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*Thomas Le Breton*, Esq., further examined.

Thomas Le Breton, Esq.

3208. You were good enough to send to the Commissioners a report of Marin's case?—I did.

3209. Mr. *Charles De Sainte Croix*. It is a verbatim translation from the documents in the Court; it was translated by me.

3210. (To Mr. *Le Breton*.) We were told by Mr. Le Sueur that he thought the duty of the constable was on all occasions to inquire into all the circumstances of the case?—He collects all the information possible.

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3211. He presents the information, whether it is hearsay or not?—Yes.

3212. Is that read to the jury?—Yes, as part of the proceedings.

3213. And they take it out with them?—Yes.

3214. Practically, then, the rule, that hearsay evidence is not receivable here, does not apply to that part of the evidence?—It applies so far that the jury are told that they are only to attend to the direct evidence in the case, and not to pay attention to the hearsay evidence which there may be in the report or in the depositions.

3215. We observe in this Report statements of what a wife has said of her husband?—That is very often entered in the Report, but of course cannot be considered as evidence.

3216. Mr. *Charles De Sainte Croix.* Generally speaking, in all criminal proceedings, the statement of the Attorney General, and the direction of the Judge, point out to the jury what is evidence and what is not.

3217. Mr. *Hammond.* In rather a recent case, I have heard it argued by the Bailiff, in summing up, in answer to an objection taken by the counsel, that it was evidence, because it was confirmed by the oath of the constable: but that could not make it evidence a bit more where it was not really evidence.

3218. Mr. *Le Breton.* I should like to remark upon that that I have always made it a point to inform the jury that they were not to rely upon any hearsay evidence; and, when the advocates have pointed out some information of this kind as being hearsay, I have always told the jury it was so, and they were not to attend to it.

3219. Mr. *Hammond.* No doubt the Attorney General is quite ready to admit, when such a part of the evidence is pointed out by the counsel, that it is not to be received as evidence.

3220. Mr. *Le Breton.* Formerly the constable's Reports were not so full as they are now. Within these ten or fifteen years we have introduced a little history of the case, as it were.

3221. (To Mr. *Le Breton.*) In cases which have been argued on points of law, do the learned Judges give their reasons at all?—No; they give their opinions.

3222. Mr. *Dupré.* They give a summary of the reasons in the Act of Court.

3223. Mr. *Hammond.* I do not think you will find that they give their reasons in any way in a criminal cause.

3224. Do the Jurats, in ruling upon a point of law as to the admissibility of evidence, give their reasons?

3225. Mr. *Marett.* The counsel for the prisoner can insist upon the reasons being given.

3226. Mr. *Dupré.* I take it that, where there is a decision given whether the question was proper or improper, there would be an act of the Court. The Court would state its grounds for so deciding; but the Jurats do not give their opinions.

3227. Sometimes those cases are decided by a majority; of course, therefore, the reasons of the majority only are given?—No.

3228. (To Mr. *Le Breton.*) There has been, has there not, on some occasions a charge that, in cases where they took a personal interest, the enditement has been packed by the Police?—Such a report has been circulated in a recent case, that of Nicolle.

3229. Was there any report of that sort before the trial?—I did not hear of any.

3230. What was done in consequence of the report after the trial?—There was a representation presented to Court by Mr. Le Sueur, who presided at the enditement on that occasion.

3231. He was anxious to have it examined into?—Yes.

3232. Mr. *Le Sueur.* More especially as the man was under sentence of death.

3233. Mr. *Le Breton.* A copy of the representation is in the hands of the Greffier, I believe?

3234. What was done?—The Court, that is the larger number, directed the Crown Officers, without making an act of it, to inquire and investigate the matter, which we did in consequence, by applying to some of the parties named in the representation, and, more particularly, to Mr. Nicolle, the father of the convict.

3235. Did he make the representation?—Mr. *Le Sueur.* One of the family had spoken to me on the subject, and had asked me whether there had been such an understanding. In consequence of that, I brought it before the Court, so that the Court might deal with it.

3236. (To Mr. *Le Breton.*) Did you examine everybody mentioned in the representation?—I think we examined everybody except one man, Romeril, who appeared to be the authority, or at least the circulator of the report; but we examined the persons from whom he stated he had collected that information.

3237. The whole of them?—Yes.

3238. Did you examine Binet?—No, because he formed a part of the jury on that occasion.

3239. Binet was the proper person to summon the enditement, was not he?—Yes; he warned the officiers de connétable to attend the enditement; that we were not aware of. It was done by him in his capacity of vingtenier, by order of the constable.

3240. Did the charge come to anything, in your opinion?—Mr. *Dupré.* The father asserted strongly that the facts alleged were true, that he had it from one of the police officers.

3241. The fact of packing the jury?—Yes; and their meeting together to deliberate what verdict should be given beforehand. We required him to give the name of the party from whom he said he had it; but he never would do so.

3242. Did he name Binet?—I do not recollect his doing so; it rested with him to give up the name of the party; and we gave him till the next day to consider whether he would do so.

3243. His son was then under conviction?—Yes.

3244. And, of course, that might have very much influenced the fate of his son?—Yes.

3245. Did you make him aware of that?—Yes; we pointed it out in as strong a manner as

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we possibly could; we told him that, if we could prove such a fact, it would be our duty to take measures to stop the execution of his son. The next day he again positively declined naming the party, saying, it might be an injury to him if he did so. The Court met, I think, that very day; and we reported accordingly. Of course the Court could take no notice of such a case.

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Mr. *John Nicolle* examined.

Mr. John Nicolle.

3246. Have you heard what these gentlemen have said?—Yes.

3247. What do you wish to say upon it?—I presume that the two Crown officers say we did not give up the names of those who had spread the report about. They had come to my brother, and informed us of a certain meeting being held by the police. I say that we gave the names up.

3248. Who is "we"?—My brother and myself.

3249. Whom did you name?—Mr. Charles Romeril and Mr. John Binet, as the summoning officer. I have a copy here of the representation that was made to the Court (*producing the same*).

3250. (To Mr. *Dupré.*) Why was not Romeril examined on the subject?—I spoke with him on the subject, but not with the proper officer.

3251. Why not?—He told me he had the report from two parties. We sent for those two parties from whom he had the report, who both denied that they told him so.

3252. Do you recollect the name of Binet being given to you?—No. He told us there was an officer of police who had full knowledge of the subject, and who informed him. He told us, I think, that he had been warned to attend the meeting, but did not attend it. We pressed him strongly to give us the name of the party; but we never could prevail on him to do so.

3253. (To Mr. *Nicolle.*) Did not you refuse to give up the name of the officer of police?—Yes, the centenier; but that is not either of the others that I stated.

3254. What did you tell this gentleman about Binet?—That he had packed the jury in one way.

3255. You told that to the Law officers?—It was told the Law officers by my brother, what Mr. Binet had done in the way of warning the officers of police.

3256. (To Mr. *Le Sueur.*) Who made the list on that occasion?—I made the list; or at least I gave directions to my clerk to make it, and put down the different police officers who had not deposed as witnesses, and who lived in the town.

3257. Can you state whether the list from which the enditement was summoned corresponded with the list you gave?—There was a name altered, with my sanction.

3258. What name was that?—Mr. Bischal, I think, and another substituted, James Dumaresq.

3259. What was the reason of that?—Mr. Binet told me, I think, that Mr. Bischal could not attend. I have since heard a different reason stated; but that was what was then told me.

3260. What is the reason you have heard stated?—Either that he said, he would not form part of the jury, or some such expression; that he was one of a former jury, where a person had been found Guilty; and that he would not attend.

3261. That he had a dislike to capital punishments?—That he had a dislike to the duty of attending. In fact, as to the accusation of packing, when the witnesses were excluded there would have been a very small number to pack from. As it was a very important case, I thought it was better to have the police officers who lived in the town. I must say that it is a very unpleasant duty to perform, although in most cases it is not very important who forms part of the enditement. I think it is also very unpleasant for the Attorney General to have to select the grande enquête in certain cases. And, as to the Police, it is very disagreeable to the Police to have to sit as jurymen, as it sometimes happens that things have come to their knowledge which do not appear upon the evidence. I believe, however, that in the verdicts of the enditements generally justice is done. If those things were to occur more often, it would render the position of the constable and the Police still more unpleasant. In nearly all the cases which have come before the enditement, the police are quite strangers to the individuals.

3262. (To Mr. *Nicolle.*) Have you anything to add?—I should be glad to know whether there was not another member on the list who was changed.

3263. Mr. *Le Sueur.* I believe that that was the only name that was changed after I gave the list; but I believe I struck out the name of Mr. François Romeril, because, as being editor to a newspaper, he might have written some articles on the case. Here is the list which I gave to my clerk. (*The same was produced.*)

3264. Mr. *Nicolle.* I should like to make an observation concerning the trial. Previous to my cousin Le Cronier's assassination, Mr. Hammond, on his going to England, told me that the Crown officers had heard all the witnesses for the accusation. Mr. Hammond left, I believe, on Tuesday. My son had been brought up on the Friday; and on the Friday the Procureur Général stated that they were all the witnesses that were to be heard for the accusation. Mr. Hammond went to England on the Tuesday. Mr. Le Cronier was assassinated on the Friday. Mr. Hammond was gone for several days. I believe he returned the Sunday following. When he returned, he told me that two other witnesses were to be brought up for the Crown; and he named me the two parties: one of them was Mr. Ligne, and another a French woman whom I did not know. I acquainted the counsel for the prisoner that I knew Mr. John Ligne was an enemy, and not a fit person to be heard. As to the other, I could not tell what she was. However, she did not come forward.

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3265. Did Ligne come forward?—Yes. Previous to their going to Court to depose, the Attorney General, if I am well informed by what Mr. Chevalier has stated, sent his clerk and Mr. Chevalier to question Ligne: and, as the French woman lived in the same place, they also asked for her; and another person was then there; and she stated that Madame Tardif was afraid of the Police, and would not come forward. They said: "we must have her come; and you must go and call her." She was called. When she came forward, they said: "let us have all the truth." She said: "I know nothing about this affair; and therefore I can have nothing to say." They said: "do not tell us lies; we know all about it." She persisted, however, in saying that she knew nothing about it; and therefore she was not brought forward as a witness.

3266. (To Mr. *Le Breton*). Is a recent enmity a ground for excluding a witness?—No, certainly not.

3267. Mr. *F. Godfray* (Advocate). That has been decided in a full Court.

3268. (To Mr. *Nicolle*). Did your counsel, when Ligne was called, say, "This is a case of recent enmity against the prisoner; and therefore he cannot be heard?"—I cannot say. Mr. Hammond had not been the counsel whom my son applied to to defend his cause. He was appointed by the Court. He applied to Mr. Godfray to defend him; but Mr. Godfray refused.

3269. Have you anything to add to what you have said?—I persist in saying that we named Binet and Romeril.

3270. How came you not to give the name of the other policeman?—It was only the hearsay of this policeman. He had admitted that there had been a meeting that evening. I have also to explain that two of those who attended on the jury were out of their office for a considerable time. It is the duty of their office to attend an enditement: and, as they were not in office, nor re-elected, nor re-sworn, it is very unjust.

3271. You could have made an objection to the Court at the time, could not you?—I was not there.

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Mr. Peter Le Sueur.

Mr. *Peter Le Sueur* further examined.

3272. A cause en ajonction, in some sense of the word, is a civil suit, is it not?—Both civil and criminal.

3273. Has the party who set the ajonction in motion the power of desisting if he pleases?—That is generally the case. There are many instances where persons have abandoned their cause en ajonction.

3274. Can the Procureur Général or the Avocat Général insist upon the cause going on?—I should think not; not the same cause.

3275. It is taken to a certain extent out of their control?—It is: but that is a reason why those causes should never be instituted, except for common Assaults or cases where the public is not greatly interested. It should not be instituted where there is crime.

3276. You say it should never take place where the public have any interest in the prosecution going on?—Where they have any great interest.

3277. If the public has no interest, there appears to be no reason why it should not be a civil cause.—No.

3278. In cases where the public has an interest, that leaves it to a certain extent in the hands of the party to compromise that interest?—Yes, which is highly improper; and indeed, I do not wish to go into the details of the case, but in one case a cause en ajonction has certainly been used by a party as a means to extort money; and the money was divided among the witnesses. It was an action brought by a party pretending that he had been assaulted by another with the intention to commit an unnatural crime.

3279. This Assault was the ground of a cause en ajonction?—Yes. The defendant was arrested; he gave bail; and shortly afterwards he compromised the matter: the money was divided between the plaintiff and one of the witnesses. It is not necessary to go any further into the case.

3280. It might be a mode of extortion in that way?—Yes. At the same time, I do not think that, by our practice, an ajonction ought to have been granted in that case.

3281. You think it ought to have been made an exclusively criminal case?—Yes, because I do not see how the plaintiff could have any right to claim damages in such a case. When a remontrance is presented to the Court, an ajonction is granted ex parte before the defendant has had time to appear before the Court: and I am confident that, in many cases, the Court would not have granted an ajonction if the defendant had been heard. But, when once given, I suppose the Court has no right to withdraw it.

Adjourned.

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Communications from J. Le Couteur, Esq., Viscount.

COMMUNICATIONS from JOHN LE COUTEUR, Esq., Viscount of Jersey.

SIR, *Belle Vue, Jersey, September* 23, 1846.

I HAVE the honour to inclose, for Her Majesty's Commissioners, some remarks and authorities in support of my evidence on "Enditements," &c., given before them, with a Return of the Prisoners sent to the Jersey Gaol, in the ten years previous to the introduction of steam navigation, and the twenty subsequent years.

Also, my remarks on the Royal Court, and suggestions for its modification, with a list of various charters granted to Jersey by the Sovereigns of England.

I have, &c.,

*Charles Clark, Esq.,* J. LE COUTEUR,
*&c. &c. &c.* *Viscount of Jersey.*

P.S. I also inclose the decision of the Court with regard to Coroner's Inquests.*—J. LE C.

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REMARKS on the DERIVATION of the "ENDITEMENT," which is now formed by the Constable and twelve Police Officers.

In an ancient edition of the "Grand Coustumier," of the year 1515, printed twenty four years earlier than the edition of Rouillé, usually so called, of 1539, in the "Stille de proceder," I conceive we find the trace of our "Enditement." At the article "Du Procedement à la Vue et "enqueste des dictz bref et Clameur de Haro," it is seen that twelve men were summoned by the "Sergent," to try the case, and, if these twelve men were not challenged by either party, they heard the cause. "Iceulx douze ainsy acceptez sont faictz retourner en Jugement." If seven out of the twelve agreed, as is the custom in Jersey, the verdict was good. The article de "Jureurs," chap. lxix. fo. xciii., informs us that "Jureurs sont ceulx qui sont mis en enquestes "et tesmoins sont ceulx qui sont mis en preuve de certain," which makes the distinction between the twelve jurymen and the witnesses clear.

At "De Haro," chap. liii. fo. lxxiiii., we find "Le Duc de Normendie a la Court du Haro "et en doit faire enqueste sil fut crye a droit ou a tort: car il ne doit estre crye fors pour cause "criminelle. Si comme pour feu ou pour larcin ou pour homicide ou pour autre evident peril." &c.

It is thus clear that cases of "Clameur de Haro" were then tried by twelve men, which is not the case with us now, as "Haro" is only used to arrest invasions on property, or some other civil cases. Terrien, Lib. ix. c. 33. p. 387., "De Preuve qui se fait par enqueste veue et ostension de lieux," cites Rouillé au chapitre de Querelle fioffal, where enqueste is said to be the "acknowledgment of the truth of the fact in litigation by the oath of *twelve* chevaliers, or of "twelve other preuds" (Preuds, is rendered by Kelham, wise, discreet men), "trustworthy "and not suspected."

Kelham renders "Enditement" to mean interpretation; and "enquester" to find out. The practice has varied in some instances. 1611. July 20. The Constable and *six* Sermentés of St. Ouen formed an Enditement. 1611. December 5. The Court ruled that if the six differ, there must be twelve for an Enditement. Here we see the decision of the Court to secure the absolute majority by the concurrence of the six Sermentés with their Constable or President; for we find once more in 1630, December 9, a Constable and six Sermentés on an Enditement; hence an absolute majority of seven was meant to be secured.

It may be proper to state here the opinion of the most learned commentator on the laws of Jersey, Lieutenant Bailly Le Geyt, whose works are considered of such authority and research as to be now in course of printing at the expense of the States. Mr. Le Geyt was equally renowned for his love of justice as for his attainments. I wish to shew his opinion, in answer to a remark by Mr. Advocate Godfray, who stated that I was incorrect in informing the Commissioners that an Enditement of six had ever sat, and that it was only as Voyeurs before the Vicomte. Here are the learned commentator's words. "Comme les Connétables doivent particulièrement faire observer les ordonnances de la Justice, et qu'à cet effet ils en doivent avoir, chacun d'eux, un Recueil, cela leur donne une grande connoisance de la Police, et comme ils assistent toujours aux déliberations des Etats, ils ont lieu de manifester leur mérite, et de remporter, comme ils font assez souvent, les suffrages du peuple, lors qui'il se présente quelque place de Justice à remplir. Les Connétables se tiennent découverts dans les Etats, et se levent quand ils parlent." (It would seem as if the jurats then sat covered in the States.) "Ils y doivent assister en personne, et ne pas envoyer des Centeniers sans une légitime excuse (Vide Acte de 1685, le 18me May). Lorsqu'il s'y fait quelque proposition, qu'ils ne goutent point, c'est à eux une evasion ordinaire de demander du temps pour communiquer la chose à leurs Paroissiens. Mais la cour ne le leur accorde que lorsqu'elle le juge à propos, et c'est souvent lorsqu'elle veut elle même que la proposition n'avance pas, ou qu'elle ne réussisse point, car il est peu de nouvelles propositions que le peuple agrée, et qu'il n'envisage comme un piège ou comme un projet, qui ne tend qu'à l'avantage de quelque particulier. La charge de Connestable est une des plus fatiguantes mais elle n'est pas perpétuelle. En 1577, le 3e Juillet, il fut généralement 'permis au Connétables de faire faire un choix de deux personnes par la pluralité des voix de leurs paroissiens, lesquels élus ils doivent présenter le prochain Samedy d'après le Saint Michel, et l'un desquels sera établi par la Justice, et après avoir exercé trois ans, sera déchargé s'il le demande.'"

It appears from this passage that the election of constables took place then nearly, if not simultaneously, which put an end to much party interference from parish to parish. "En 1621, le 6 Octobre cela ne fut plus laissé à la liberté des Connétables. On ordonna qu'après *Trois ans* on ferait un nouveau choix, toutes fois et quantes par devant un Justicier. En 1629, le 24 Septembre, '*Les Principaux de la paroisse*" (not universal suffrage) "*le Dimanche prochain*

* This has been already printed at p. 173 of the Evidence.

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*après la Cène au Terme Saint Michel, une fois en trois ans pourront choisir un Connétable et luy assigneront jour du Samedy prochain.'"*

Thus the Principaux elected the Constable on the same Sunday following the feast of St. Michael after Sacrament, simultaneously all over the island. It is also shown, that "En 1541, le 21e Avril, deux Connétables prirent serment pour la Paroisse de St. Hélier. Cet exemple n'à pas eu de suite; il n'y a qu'un Connétable par chaque Paroisse; mais il est secondé d'un Centenier qui fait le même serment *mutato nomine*, et les mêmes fonctions en l'absence du Connétable. Présentement il y a fort peu de paroisses où il n'y ait deux Çenteniers, et cette multiplication est nouvelle. Outre les Centeniers, les Connétables ont aussi pour assistants des Vingteniers et douze autres hommes des plus substantiels de la Paroisse, *après ceux* qu'on appelle les Principaux, et ces douze hommes portent le titre de *Sermentez du Connétable.* Un acte de 1576, le 17e May, dit, '*Que les Connétables feront cherche généralement en leurs Paroisses douze fois par "an au jour qui leur sera appointé par la Justice, assistez de tels gens de bien que bon leur semble.*' En effet le nombre des sermentez n'etait pas anciennement si grand. *Six suffisoient pour enditer,* comme il a été dit ci-dessus, au lieu qu'il en faut à présent douze. Et parcequ'entre les sermentez, les uns peuvent être indisposez, et les autres absents de l'Isle, il y a peu de Paroisses où le Connétable n'ait dix-huit Sermentez, afin que le nombre se puisse toujours trouver complet. Dans les occasions presantes, la Justice en a même juré quelques uns qui par hazard se trouvoient en Cour." The Court thus swore in Special Constables, Officers, or "Sermentez," on pressing occasions. The Constables were given power to imprison in the year 1639 by Ordonnance of the Royal Court, which then was law. They have exercised it ever since, and are now bound to do so, when necessary, by virtue of their oath of office.

Terrien, at Lib. xii. c. 28. p. 503., cites the "Chapitre de Haro." "Tous ceux à qui la "Justice commandera à garder tels mal-faiteurs, ou les amener en prison en la ville où les mal-"faiteurs sont, doyvent faire aide de leurs corps une nuict et un jour, ou autres pour eux qui "soyent suffisans à les mener en prison. Et ce est appelé le plet de l'espée car tels mal-faiteurs "doyuent estre reprimez à l'Espée et aux armes; et doyuent estre mis en prison et liez." Which has been the practice of our Police; both the imprisonment and Enditement being traceable to ancient usage.

Our Enditement evidently was intended to be, as its name imports, the *interpretation* of the fact, and was to be followed by an appeal to the Grande Enqueste, or *finding out.*

Rouillé shows that the Enqueste was to be composed of twelve *indifferent men.* Hence I object to the construction of our Enditement, because some of its members may be, if not the identical individuals who have seized the offender in "flagrant délit," those who had him in custody, or those who may have been insulted or struck by him. If not these, they may still be their colleagues and associates, thus, probably, entertaining a leaning against a violent prisoner.

Again, if the prisoner should happen to be a near relative to one of the Police, the case becomes more complicated. No men, under such conditions, should be called on to sit on a Jury.

The remedy to this evil, which Dumaresq and Hemery viewed in the same light, would seem to be easy. The parish assembly in January, as soon as the annual rate should be finally fixed, might select a number of intelligent men, who are to be met with in every parish, to serve as Jurors. A list of these should be sent in, in due form, signed by the Constable, to the proper officer, who should draw a given number of names by lot, when required, from each district. The Juries from the western parishes to try offences committed in the eastern district, and Juries from the east to try offences committed in the west district.

The evidence should be *vivâ voce,* not written.

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RETURN of the NUMBER of CRIMINALS, confined in the MAJESTY'S PRISON at JERSEY, from the 16th of June 1814 to the 16th of June 1824—being the ten years previous to the introduction of Steam Navigation.

Mr. Plees, a historian of Jersey, assumed the population of the Island to be about 23,000 in 1814, just at the close of the war: in 1824 it might have risen to 30,000. Two thirds being assumed to be natives, taking the average at 27,000 for the first ten years, we have 18,000 Jersey, and 9,000 of other countries; of these 552 were sent to the prison charged with offences, divided into 192 of Jersey or British Jersey parentage, and 360 Irish, English, Scotch and Foreign; being an average of 19 Jersey persons confined yearly, and 36 of other countries. Then dividing the 18,000 Jersey by 19·2=one confined in 930; also dividing the 9,000 of various countries by 36=one in 250. In the ensuing period from the 16th June 1824, when steam vessels first plied regularly, to the 16th June 1834, the population rose from 30,000 to 40,000 nearly. Estimating, as before, on an average of 35,000 persons, divided into 23,000 Jersey, and 12,000 of other countries, we find that 1257 were sent to gaol, divided into 412, of Jersey or British Jersey origin, and 845 of other countries; being an average of 41 Jersey persons confined annually, or one in 560, and of 84 of other countries, or one in 142. In the last period, from the 16th June 1834 to the 16th June 1844, the population has increased from 40,000 to 50,000 nearly. Assuming an average of 45,000 persons, divided into 30,000 Jersey and 15,000 of other countries, we find that 2174 were sent to gaol, divided into 643 of Jersey or British Jersey origin, and 1531 of other countries, being an average of 64 Jersey persons confined yearly, or one in 468, and 153 of other countries, or one in 98.

It may be stated that of those included in the Jersey class considerably more than one half are children of Jersey mothers, who have married English, Irish or other persons, who all call themselves Jersey; so that the list of crime, among the pure native population, would not be half the average above stated. It is also proper to add that about one sixth of the other offenders are foreigners, who came to this Island in the course of the extensive trade which is carried on here.

*Viscount's Office, 22nd September,* 1846. J. LE COUTEUR, *Viscount of Jersey.*

REMARKS and SUGGESTIONS of JOHN LE COUTEUR, Esq., Viscount of Jersey, on the Constitution of the Royal Court.

The charter of King John shows of itself that the Bailli existed before the Jurats. He may have previously exercised his very extensive powers under the Dukes of Normandy (Rouillé, Ch. iiij. de Justicier), with the Vicomte (Ch. V.), the Sergents de l'Epée, the Bedeaulx, and the Officers of the Crown; holding Courts with the seigneurs of Fiefs Hauberts (Terrien, Lib. III. Ch. xiii.), aided by the Juries of twelve or twenty four "Preuds" during the Assizes which lasted forty days (Coustumier, de Assize, Chap. xxiiij.); the Duke always reserving to himself Sovereign power. (Vide Coustumier, Chs. xii. xiii. xv. xvi.)

That charter of King John was invaluable for the period. It altered what was probably a pure feudal jurisdiction to one with the form of a Court Royal. It granted twelve Jurats, Coroners, natives of the soil, to be elected by the King's Officers and the "Grands du Pais," to act as Judges in last resort, in all cases excepting treason, or cases too difficult, which the Sovereign reserved for his own tribunal. The liberties of the people were well secured by the charter.

In the year 1835, when the Attorney General and myself were Deputies of the States, acting with Mr. Brock, the Bailli of Guernsey, to defend the right of the Channel Islanders to export corn to England, Mr. Stacey Grimaldi collected the titles of whatever Jersey or Guernsey charters he could then find. There are more, however. He found that of King John, registered in the Rolls, called Escheats, in the Tower of London, in the 33rd year of the reign of his son Henry III., 1248. Various and many charters, immunities, and privileges, were granted to Jersey and Guernsey, by the following Sovereigns. (See the list annexed.)

These signal rewards were bestowed for service in war against the most powerful and constant foe to England, for holding this small Island for the British Crown on eleven occasions of attack or invasion. The powers of the Bailli and Jurats were greatly extended by James the First and Charles the Second, who granted the Patent of Impôt, making them, with the Governor, the administrators of a great portion of the revenue. In other cases, as I have shown by my former replies, their powers have been restricted, and, in some few cases, extended.

Under all circumstances the Crown and the law appear to have intended the Jurats to be treated with deference, as being the administrators of the law, and enjoying the confidence, at least, of the majority of the constituency who elected them. Yet this right of election, which, after 1605, dwindled into universal suffrage, has led to the evil which the last Royal Commissioners foresaw: the Jurats are believed to be party men. While I had the honour to sit on the Bench I really did not find it to be so, excepting, perhaps, one or two purely election cases. In all others, every pains was taken to discuss points, and to arrive at the truth; and, although I might often have differed from my colleagues, I perceived sufficient reasons in their objections to lead me to think that they conceived they were right. In all cases, too, the leaning was in favour of a stranger, especially if he were unprotected. The chief difficulty was, the absence of fixed law to refer to. The Old Code of laws, Orders of Council, Precedents of the full Court and Acts of Parliament registered here, were our guides. Had the Reports of all the Royal Commissions which had been sent to Jersey been collected, revised, confirmed and registered, as the basis of a code, much good would have been done. The most serious charge against our ancestors is the shameful way in which they evaded to register salutary laws, which they themselves had approved, signed and sealed in the most solemn way, in conjunction with the most discreet men the Sovereign could select. The "Ordres, Loix, et Ordonnances" of Pyne and Naper in 38 Articles were admirable. I suspect that the restrictions which were laid on the Viscount and other influential officers of the Court were the cause of this.

About the year 1835, a most dangerous, nay alarming, practice prevailed, that of recusing or challenging the Jurats without limitation, so much so that, at one period, in certain causes, no Court could be formed.—See Duheaume *v.* Arthur, 30 Sept. 1835; Bisson *v.* Le Quesne, 18 July 1835; Whitfield's Case, 29 Oct. 1836; and others.

Besides the difficulties which perplex the Jurats there are minor evils to correct.

1. The pleading of the Crown Officers against each other in "causes en ajonction" tends to shake the confidence of the Court in the opinion it should entertain of these gentlemen; nor do these causes place the parties on a fair or equal footing.
2. The Crown Lawyers should act as advisers to the Court as they do in France.
3. The Jurats should meet, robe and deliberate in a room of their own, exclusively from all other persons.
4. The Jurats should not sit on Committees of the States. The coarse and familiar language which is there addressed to them, on party discussions, or on making appointments, such as for Harbour Masters or others, in the gift of the States, is unavoidably carried into the Court of Justice.
5. As it is in Guernsey, the Bar should not act in the double capacity of Constables and Advocates; the offices being quite incompatible, either with free discussion in the States, where they become mouthpieces to a party, or in the Court and on Committees of the States, where they are too much on a level with the Jurats.

In order further to suggest remedies for other evils, I had prepared matter with the view to show that our constitution might be propped and restored, in the original sense of the Charter of King John: but I confess that all my previous conceptions have been disturbed by the evidence which has been given before the Commission. I see no other light than to follow in the track by which the most free and wise people of modern days have travelled, the British, French and American races, all as free in their thoughts and as jealous of their liberties as we have ever been. The mass of evidence taken comprehensively must convince

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any ordinary understanding that the present form of our Court is totally unsuited to our high position in civilisation. Hence I hope that, when it appears in print, and is submitted to the good sense of my countrymen, they will come to the conclusion of other enlightened people.

With reference to the formation of a Jury, there are many "good men and true" in every parochial assembly, who might be named by the vestry meeting to act as Jurymen. A certain number from three parishes of one part of the Island might be summoned to try offences committed in the other, in the mode I have before suggested. There could then be no probability of frequent connection between the Jury and Prisoner; besides, there would be the right of challenge on both sides. It may be perceived that the lives, properties and interests of fifty thousand persons should not be entrusted to mere purity of motive, or mere honesty in practice. In order to be on a level with any other people, a sound knowledge of law is absolutely indispensable for those who act as Judges.

Of what value, or to what end, were the five previous Commissions, or the present, if all are to remain a dead letter? I have always been of opinion that, by sifting and condensing the information derived from former Commissions, we may yet preserve the *entire spirit* of our constitution, if not its *letter;* and I now believe that the best reform will be derived from those sources.

I consider that, by the Charter of the "Impôt" granted by King Charles the Second, the Governor, Bailli, and Jurats must administer that portion of the revenue which is entrusted to their care so long as any two of the Jurats live. That the present members of the States who hold seats for life should retain them so long as they see fit, or their health will permit it. I hold that every Briton, who may purchase a house, or build one, on his own land here, becomes a Jersey man, that he thereby acquires a right to enjoy our privileges, and that he is bound with us to defend them. That his sons, born here, may be Jurats or Rectors of Parishes. That the Bar should be thrown open, as the Bench of Solicitors has been. That two Judges should sit with the Bailli, to try all causes; these three functionaries to be taken from the Jersey Bar. On the illness of one or more of the Judges, the Bailli and Judges to name one or more Barristers to replace the absent Judge or Judges. All the offices of the Court to be held by Jerseymen as above described, practising in it, and being duly qualified. Appeals to be heard by the Judge of Assize (according to our constitution), who might extend his visit from Winchester to Jersey, with a final appeal to the Sovereign in Council. That the States be filled up by election, as are other similar deliberative bodies by members from the various parishes. That, on the demise of the last Jurat but one, the Impost be administered by the Governor, Bailli and States.

Under some such system there seems to be no valid reason why, with such modifications as time, reflection and debate produce, our privileges should not be handed down entire to our descendants. A greater number of situations of dignity and emolument would be open to our children. A higher and more diffused amount of education would be required, as the members of the Bar should be able to plead in either language as they do in Canada. Party spirit could no longer be charged against the Bench: and the money which now goes to England in cases of appeal would be circulated here. So soon as a greater security for property and sound law would be established, so soon as a better law of inheritance, and for the disposal of property, was passed, so soon would the value of land, and of household property, greatly increase.

J. Le Couteur,
*Viscount of Jersey.*

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A List of Divers Charters, &c., relating to the Commercial Privileges of the Islands of Jersey, Guernsey, Alderney, and Sark, collected by Mr. Stacey Grimaldi.

| Date. | — | Where Preserved. |
|---|---|---|
| | John. 1200-1216. | |
| | The celebrated Laws of King John were enrolled in the 33rd year of his son King Henry the Third's reign on the Rolls called Escheats. | Escheats, Tower of London. |
| | Henry III. 1217–1272. | |
| 33 Hen. III. 1248. | Libertat 'pro Piscator Insula de Gernis. | Patent Rolls, Tower. |
| 33 Hen. III. 1248. | The Laws of King John were enrolled at this date.* | Escheats, Tower. |
| | Edward I. 1273–1307. | |
| 27 Edw. I. 1298. | De legibus et consuetudinibus hominum insularum de Guernsey, &c., in scriptis redigend 'in perpetuam rei memoriam. | Patent Rolls, Tower. |
| 20 Edw. I. 1291. | Divers 'concern 'insul 'de Guernsey, &c. | Patent Rolls, Tower. |
| | Edward II. 1308–1327. | |
| 15 Edw. II. 1321. | Pro Rege de inquirendo de diversis concern 'insul de Gernesey, &c. | Patent Rolls, Tower. |

* The document here referred to is perhaps the Inquisition made in 33 H. III., in pursuance of a Commission to inquire into the customs of the Islands of Jersey and Guernsey and the laws instituted there by King John.

A List of Divers Charters—*continued.*



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| Date. | — | Where Preserved. |
|---|---|---|
| | EDWARD III. 1328–1377. | |
| 20th May, 14 Edw. III. 1340. | Littera Regis missa ad Ballivum et Juratos insule de Geresey, transcribed in the Fœdera, in Falle and in Jeune. | Patent Rolls, Tower. |
| 15 Edw. III. 1341. | Concessio pro hominibus Insular 'de Jeresey, &c., de privilegiis, in Falle's Account of Jersey. Transcribed in the Fœdera. Recited at length by Inspeximus in the Charter of 20 Henry VI. | Patent Rolls, Tower. |
| 44 Edw. III. 1370. | Concessio quod Homines de Jersey, &c., sint quieti per totum regnum de theolonio, &c., per viginti annos. | Patent Rolls, Tower. |
| | RICHARD II. 1378–1399. | |
| 1 Rich. II. 1377. 2 Rich. II. 1378. 10th November | Letters Patent for confirming the liberties to Jersey, &c., recited in the Charter of 5 Edw. IV. Charter of Liberties mentioned by Inspeximus in the Charter of Henry VI. | Patent Rolls, Tower. |
| 14 Rich. II. 1390. | The Inhabitants of Jersey exempted from tolls, customs, &c. (the same as denizens), for seven years, on payment of 6,000 franks annually. This is printed in the Rolls of Parliament, vol. iii., p. 281–6. | Rolls of Parliament, Westminster. |
| 18 Rich. II. | Charter. De confirmatione pro hominibus Insularum de Jersey, &c., de libertatibus.<br>Recited in Charter of 5 Edw. IV. at full length. | French Rolls, Tower.<br>Patent Rolls, Tower. |
| | HENRY IV. 1399–1413. | |
| 1 Hen. IV. 1399. | Charter of Confirmation of Liberties for the Men of Jersey, &c., Guernsey, mentioned by Inspeximus in the Charter of 20 Henry VI. | French Rolls, Tower. |
| Same date. | Finis Solutus pro confirmatione Libertatum . . . . | Memoranda, Rolls Exchequer. |
| | HENRY V. 1413–1422. | |
| 1 Hen. V. 1414. February. | Charter. De confirmatione pro Insulis de Jeresey, Gerensey, &c., de libertatibus suis, mentioned by Inspeximus in the Charter of 20 Henry VI. | French Rolls, Tower. |
| | HENRY VI. 1422–1461. | |
| 1 Hen. VI. 1422. | Charter of Liberties, mentioned by Inspeximus in the Charter of 20 Henry VI. | Patent Rolls, Tower. |
| 14 Hen. VI. 1435. 9th August. | De Licentia pro Mercatoribus Insularum de Gerensey et Jeresey versus insulas prædictas transeuntibus et in Angliam redeuntibus. | French Rolls, Tower. |
| 20 Hen. VI 1441. 10th February. | Charter of Liberties for the men of Jersey, &c. . . . . | French Rolls, Tower. |
| 20 Hen. VI. 1441. 27 Hen. VI. 1441. | A Subsidy granted on every person inhabiting England, not born in England, Wales, Normandy, Gascony, Guiene, Jersey, and Guernsey.<br>These are printed Vol. iv., 536, of the Rolls of Parliament. | Rolls of Parliament, Westminster. |
| 22 Hen. VI. 1443. 8th May. | Privy Seal, that the Men of Guernsey are to be free from all payment of Toll, otherwise called La Petite Costume in all Ports. | Lansdown MSS, British Museum, No. 18, Art. 72. |
| 28 Hen. VI. 1449. Ch. 4 and 5. | Act of Parliament, granting Redress to the King's liege Merchants of Guernsey and Jersey for Charges and Impositions taken on their Goods and Merchandize. This is printed in the Public Edition of the Statutes. | Parliament Office, Westminster. |
| 35 Hen. VI. 1456. | De exoneratione Subsidii pro Inhabitantibus de Guernsey et Jersey. | Patent Rolls, Tower. |
| | EDWARD IV. 1461–1483. | |
| 5 Edw. IV. 1465. | Grant of Liberties . . . . . .<br>Recited in Falle's History. | Patent Rolls, Tower. |

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A List of Divers Charters—*continued.*

| Date. | —— | Where Preserved. |
|---|---|---|
| | EDWARD IV.—*continued.* | |
| 8 Edw. IV. 1468. 28th January. | Ampl' Libert' concess' Gentibus et communitatibus insular' de Geresey, &c. Set out in Jeune's Histoire. | Patent Rolls, Tower. |
| | Pro Inhabitantibus Insularum de Guernsey and Jersey, ad emendam. | |
| 8 Edw. IV. 1468. 28th October. | Mercandisas in Anglia et eus ducendas in insulas prædictas, &c., absque solutione customæ in resolutione summæ ce 2833*l.* 6*s.* 8*d.*, circa reductionem insulæ de Jersey et Castri de Mont Orgueil, ad obedientiam Regis quod ipsi expenderunt. | French Rolls, Tower. |
| | HENRY VII. 1486–1509. | |
| 1 Hen. VII. 1486. | Charter of Liberties. Copy in Mr. Le Breton's possession, abbreviated in Jeune's Histoire. | Rolls Chapel, Chancery-lane. |
| 1 Hen. VII. 1486. | Diversi Fines soluti pro diversis confirmationibus diversarum privileg': Communitati de Gersey, &c. | Originalia, Rolls, Exchequer. |
| | HENRY VIII. 1509–1547. | |
| 1 Hen. VIII. 1509. | Charter of Liberties, containing an Inspeximus of the Charters of Henry VIII., Edward IV., and Richard II., that of Henry VIII. being set out fully. | Rolls Chapel, Chancery-lane. |
| 1 Hen. VIII. 1509. | De Generosis et Communitate Insulæ de Jersey Finis solutus pro confirmatione Libertatum. | Memoranda, Rolls, Exchequer. |
| 2 Hen. VIII. 1510. | Communitas et Gens Insularum de Jeresey, &c., Finis solutus pro confirmatione Libertatum. | Originalia, Rolls, Exchequer. |
| Same date. | Similar Entry. | Memoranda, Rolls, Exchequer. |
| 20 Hen. VIII. | Charter of Liberties. Recited by Inspeximus, the earlier Charters of Liberties printed at Oxford in 1755. | Rolls Chapel, Chancery-lane. |
| | EDWARD VI. 1547–1553. | |
| 2 Edw. VI. 1548. 6th May. | Charter, confirmans Libertates Insularum Jersey et Guernsey. Recited by Inspeximus, the Charter of Henry VIII, that of Henry VII, that of Edward IV., and that of Richard II. A transcript of this Charter is in the British Museum, Royal MSS. 13 B. I. 4. | Rolls Chapel, Chancery-lane. |
| | MARY. 1553–1558. | |
| 1 Mary. 1554. 6th February. | This Charter recites a Bull of Pope Sextus IV., dated 1483, confirmed by Edward IV. of England, and Henry VIII., the whole of which it confirms; but the Charter has no reference to mercantile privileges, though called a Charter of Privileges. It is said to have been confirmed by the Queen by two other Charters dated 19th December, 1 A. R. & 1 Mary 2 A. R.: but these I have not seen, and they may relate to other matters. A Transcript of this Charter of 6th February is in the British Museum, Royal MSS. 13 B. I. 5. | Rolls Chapel, Chancery-lane. |
| 3 & 5 Philip and Mary. | Privy Seal to Sir Leonard Chamberlain, Captain of Guernsey, desiring a substantial hearing of a matter respecting a prize laden with French wine, taken by Wm. Wynter, Esq., Master of the Queen's Ordnance, desiring to have justice done without breach of a privilege or custom of that Her Isle, which "We will you to conserve." | Transcript in the British Museum. Royal MSS. 13 B. I. |
| 8th March, 1557. | The Queen's Privy Council to Sir Leonard Chamberlain, Knight, Captain of Jersey, that the Queen intends to preserve the observation of such privileges as have been always accustomed to be kept in the Isles. | Transcript in the British Museum. Royal MSS. 13 B. I. |
| | ELIZABETH. 1558–1603. | |
| 2 Elizabeth. 1559. | Charter of Privileges to Guernsey, Alderney, and Sark. See these Charters in Harleian MSS., 1617, and Lansdowne's MSS., Art. 26, British Museum. | Rolls Chapel, Chancery-lane. Memoranda, Rolls, Exchequer. |
| 4 Elizabeth. 1562. 27th June. | Charter of Liberties to Jersey. Transcribed in Falle's History of Jersey. In the Lansdowne MSS., 759. | Rolls Chapel, Chancery-lane. Memoranda, Rolls, Exchequer. |

Communications from J. Le Couteur, Esq., Viscount.

A List of Divers Charters—*continued.*

| Date. | — | Where Preserved. |
|---|---|---|
| | James I. 1603–1625. | |
| | Charles I. 1625–1649. | |
| 3 Charles I. 1628. | Charters of Liberties to Jersey, Guernsey, Alderney, and Sark. | Rolls Chapel, Chancery-lane. |
| Same date. | Jersey, &c., Insulæ Ballivis et Juratoribus. Libertates concessæ.<br>This is another Enrolment of the above Charters. | Originalia, Rolls, Exchequer. |
| | Charles II. 1649–1685. | |
| 14 Charles II. 1663. 10th October. | Charter granting the same liberties as the former Charters of Elizabeth, &c.<br>Copied in Jeune's Histoire, p. 110. | Rolls Chapel, Chancery-lane. Originalia, Rolls, Exchequer. |
| 1679. | Order of the Privy Council confirming the privileges, in consequence of a dispute. | Lansdown MSS., British Museum, No. 759. |
| | James II. 1685–1688. | |
| 3 James II. 1688. 15th April. | Grant of Liberties for the Isle of Jersey.<br>This Charter does not recite the previous Charters, but confirms all which have ever been granted, and grants the privileges in the same or similar words as the Charter of Richard II., with additional privileges respecting suing in their own island. | Rolls Chapel, Chancery-lane. |
| 3 George I. 1716. | This Act *removes all doubts*, and encourages the people to continue that firm and steady loyalty and fidelity to the Crown of Great Britain, &c., and confirms the previous Charters.<br>N.B.—This was the first Act of Parliament, which confirmed our Charters, passed after the *Union* by the Parliament of *Great Britain.* | |

Statistical Returns, &c.

Statement of the Population of the Island of Jersey, according to the Census of 1841.

| Parishes. | Houses. Inhabited. | Houses. Uninhabited. | Houses. Building. | Males. | Females. | Total. |
|---|---|---|---|---|---|---|
| St. Hélier . . . | 3,043 | 134 | 110 | 10,917 | 13,071 | 23,988 |
| St. Saviour . . . | 443 | 13 | 4 | 1,218 | 1,514 | 2,732 |
| St. Martin . . . | 378 | 17 | 1 | 1,265 | 1,446 | 2,711 |
| Trinity . . . . | 370 | 5 | 1 | 1,157 | 1,334 | 2,491 |
| Grouville . . . . | 322 | 5 | .. | 1,107 | 1,265 | 2,372 |
| St. Peter . . . . | 356 | 11 | 3 | 1,002 | 1,278 | 2,280 |
| St. Ouen . . . . | 351 | 3 | 1 | 979 | 1,285 | 2,264 |
| St. Brélade . . . | 391 | 47 | 8 | 958 | 1,212 | 2,170 |
| St. Laurens . . . | 356 | 7 | .. | 1,013 | 1,157 | 2,170 |
| St. John . . . . | 281 | 5 | 2 | 874 | 972 | 1,846 |
| St. Clement . . . | 220 | 2 | 3 | 666 | 825 | 1,491 |
| St. Mary . . . . | 176 | 5 | 1 | 461 | 580 | 1,041 |
| | 6,687 | 254 | 134 | 21,617 | 25,939 | 47,556 |

| | |
|---|---|
| Persons residing in Jersey, natives of England, Scotland, and Ireland . | 11,002 |
| Natives of the Island, children of the above residing with their parents . | 2,990 |
| Natives of the Island, born of Jersey parents . . . . . | 30,794 |
| British subjects, neither natives of Jersey nor of Great Britain and Ireland. | 931 |
| Foreigners, principally French . . . . . | 1,839 |
| Total Population in 1841 . . . | 47,556 |
| Ditto in 1831 . . . | 36,582 |
| Increase in Ten Years . . . | 10,974 |

Supposing the increase to have continued at the same rate as the 10 years from 1831 to 1841, the population may now be estimated at 53,000; and, as, during the same period, St. Hélier's parish increased upwards of 6000 out of the 10,974, the population may be fairly calculated at 28,000, 25,000 of which are in the town, and the increase two thirds natives of the United Kingdom.

I beg leave to observe that children of British parents not living with their families, such as married people, servants, &c., are included in the 30,794 under the head "Natives of Jersey born of Jersey parents," so that really the number which may be called English, including British subjects, not natives of Jersey, are equal to one half the population.

J. Gardner, *Secretary.*

JERSEY.

Statistical Returns, &c.

RETURN showing Number of Persons composing the Parish Assemblies

| | Number of the Quarters that give no vote. | The lowest Number of Quarters at which each | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 20 Quarters. | | | | 15 Quarters. | | | | | | | | 12 Quarters. | | | | | |
| | | St. Hélier. | | | | St. Saviour. | | | | St. Ouen. | | | | St. Martin. | | | | St. Pet | |
| | | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. |
| Number of Voters in each Parish Assembly, and Amount of Rate paid by them | . | . | . | 382 | 14,258 | . | . | 135 | 1831 | . | . | 48 | 592 | . | . | 154 | 2024 | . | . |
| Officers of Police who vote in virtue of their office, but who would not be entitled to a vote in the Parish Assembly from the number of Quarters at which they are rated | 0 | 1 | . | . | . | 2 | . | . | . | . | . | . | . | . | . | . | . | . | . |
| | 1 | . | . | . | . | . | . | . | . | 10 | 10 | . | . | 11 | 11 | . | . | 7 | 7 |
| | 2 | 4 | 8 | . | . | 17 | 34 | . | . | 3 | 6 | . | . | 6 | 12 | . | . | 4 | 8 |
| | 3 | 1 | 3 | . | . | 3 | 9 | . | . | 4 | 12 | . | . | . | . | . | . | . | . |
| | 4 | . | . | . | . | 1 | 4 | . | . | 3 | 12 | . | . | . | . | . | . | 4 | 16 |
| | 5 | . | . | . | . | . | . | . | . | 2 | 10 | . | . | 1 | 5 | . | . | . | . |
| | 6 | 17 | 102 | . | . | 1 | 6 | . | . | . | . | . | . | 4 | 24 | . | . | 2 | 12 |
| | 7 | . | . | . | . | . | . | . | . | 1 | 7 | . | . | . | . | . | . | . | . |
| | 8 | 2 | 16 | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| | 9 | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | 1 | 9 |
| | 10 | 3 | 30 | . | . | . | . | . | . | 1 | 10 | . | . | . | . | . | . | 1 | 10 |
| | 11 | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| | 12* | 2 | 24 | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| Total Number of Police and Parochial Officers who vote from holding office only | . | 30 | 183 | 30 | 183 | 24 | 53 | 24 | 53 | 24 | 67 | 24 | 67 | 22 | 52 | 22 | 52 | 19 | 62 |
| | | | | 352 | 14,075 | . | . | 111 | 1778 | . | . | 24 | 525 | . | . | 132 | 1972 | . | . |
| Ex-Police Officers entitled to vote from having held office | . | 1 | 8 | 1 | 8 | 7 | 30 | 7 | 30 | . | . | . | . | 1 | 6 | 1 | 6 | 1 | 5 |
| | . | 31 | 191 | 351 | 14,067 | 31 | 83 | 104 | 1748 | 24 | 67 | 24 | 525 | 23 | 58 | 131 | 1966 | 20 | 67 |
| Officers entitled to vote from amount of rate | . | 11 | 312 | 11 | 312 | 3 | 95 | 3 | 95 | 2 | 33 | 2 | 33 | 1 | 12 | 1 | 12 | 7 | 155 |
| Total Number of Parochial Officers and Ex-Parochial who vote | . | 42 | 503 | | | | | | | | | | | | | | | | |
| Total Number of Electors who vote from rate not holding any office | | | | 340 | 13,755 | | | | | | | | | | | | | | |
| St. Saviour — Total Police and Parochial Officers | | | | | | 34 | 178 | | | | | | | | | | | | |
| St. Saviour — Total Number of Parish Assembly who do not hold offices | | | | | | | | 104 | 1653 | | | | | | | | | | |
| St Ouen — Total Police and Parochial Officers | | | | | | | | | | 26 | 100 | | | | | | | | |
| St Ouen — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | 22 | 492 | | | | | | |
| St. Martin — Total Police and Parochial Offices | | | | | | | | | | | | | | 24 | 70 | | | | |
| St. Martin — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | | | | | 130 | 1954 | | |
| St. Peter — Total Police and Parochial Officers | | | | | | | | | | | | | | | | | | 27 | 222 |
| St. Peter — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | | | | | | | | |
| St. Brélade — Total Police and Parochial Officers | | | | | | | | | | | | | | | | | | | |
| St. Brélade — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | | | | | | | | |
| Grouville — Total Police and Parochial Offices | | | | | | | | | | | | | | | | | | | |
| Grouville — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | | | | | | | | |
| St. John — Total Police and Parochial Officers | | | | | | | | | | | | | | | | | | | |
| St. John — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | | | | | | | | |
| St. Laurens — Total Police and Parochial Officers | | | | | | | | | | | | | | | | | | | |
| St. Laurens — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | | | | | | | | |
| Trinity — Total Police and Parochial Officers | | | | | | | | | | | | | | | | | | | |
| Trinity — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | | | | | | | | |
| St. Clement — Total Police and Parochial Officers | | | | | | | | | | | | | | | | | | | |
| St. Clement — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | | | | | | | | |
| St. Mary — Total Police and Parochial Officers | | | | | | | | | | | | | | | | | | | |
| St. Mary — Total Number of Parish Assembly who do not hold offices | | | | | | | | | | | | | | | | | | | |

* No Member rated in St. Hélier Parish between 12 and 20 Quarters.

…e Amount of Rates paid by each.—(Furnished by J. Gardner, Esq.)

…l be Rated to have a Vote in the Parishes respectively.

| 12 Quarters. | | | | | | | | | | | | | | 10 Quarters. | | | | 8 Quarters. | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| St. Brélade. | | | | Grouville. | | | | St. John. | | | | St. Laurens. | | | | Trinity. | | | | St. Clement. | | | | St. Mary. | | | |
| …rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. | Number of Persons at each rate who vote from office. | Total Number of Quarters which each class pay. | Votes in the Parish Assembly. | Amount of Rate in Quarters paid to Parish Assembly. |
| . | . | 82 | 1514 | . | . | 84 | 958 | . | . | 72 | 816 | . | . | 63 | 888 | . | . | 125 | 1782 | . | . | 85 | 1430 | . | . | 57 | 449 |
| . | . | . | . | . | . | . | . | . | . | . | . | 2 | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| . | . | . | . | 14 | 14 | . | . | 8 | 8 | . | . | 11 | 11 | . | . | 8 | 8 | . | . | 4 | 4 | . | . | 12 | 12 | . | . |
| 8 | 16 | . | . | 5 | 10 | . | . | 4 | 8 | . | . | 4 | 8 | . | . | 6 | 12 | . | . | 12 | 24 | . | . | . | . | . | . |
| . | . | . | . | 2 | 6 | . | . | . | . | . | . | 1 | 3 | . | . | 3 | 9 | . | . | . | . | . | . | 3 | 9 | . | . |
| 5 | 20 | . | . | 1 | 4 | . | . | 4 | 16 | . | . | 2 | 8 | . | . | 5 | 20 | . | . | 2 | 8 | . | . | 2 | 8 | . | . |
| . | . | . | . | . | . | . | . | 2 | 10 | . | . | 1 | 5 | . | . | 1 | 5 | . | . | . | . | . | . | 1 | 5 | . | . |
| 2 | 12 | . | . | 1 | 6 | . | . | 2 | 12 | . | . | 3 | 18 | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| . | . | . | . | . | . | . | . | . | . | . | . | 1 | 7 | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| 1 | 8 | . | . | . | . | . | . | 1 | 8 | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| 1 | 10 | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . |
| 17 | 66 | 17 | 66 | 23 | 40 | 23 | 40 | 21 | 62 | 21 | 62 | 25 | 60 | 25 | 60 | 23 | 54 | 23 | 54 | 18 | 36 | 18 | 36 | 18 | 34 | 18 | 34 |
| . | . | 65 | 1448 | . | . | 61 | 918 | . | . | 51 | 754 | . | . | 38 | 828 | . | . | 102 | 1728 | . | . | 67 | 1394 | . | . | 39 | 415 |
| . | . | . | . | 6 | 29 | 6 | 29 | 2 | 10 | 2 | 10 | 1 | 2 | 1 | 2 | 4 | 16 | 4 | 16 | 1 | 2 | 1 | 2 | 5 | 11 | 5 | 11 |
| 17 | 66 | 65 | 1448 | 29 | 69 | 55 | 889 | 23 | 72 | 49 | 744 | 26 | 62 | 37 | 826 | 27 | 70 | 98 | 1712 | 19 | 38 | 66 | 1392 | 23 | 45 | 34 | 404 |
| 10 | 146 | 10 | 146 | 2 | 24 | 2 | 24 | 2 | 38 | 2 | 38 | 1 | 14 | 1 | 14 | 3 | 49 | 3 | 49 | 6 | 106 | 6 | 106 | 4 | 33 | 4 | 33 |
| 27 | 212 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| . | . | 55 | 1302 | | | | | | | | | | | | | | | | | | | | | | | | |
| . | . | . | . | 31 | 93 | | | | | | | | | | | | | | | | | | | | | | |
| . | . | . | . | . | . | 53 | 865 | | | | | | | | | | | | | | | | | | | | |
| . | . | . | . | . | . | . | . | 25 | 110 | | | | | | | | | | | | | | | | | | |
| . | . | . | . | . | . | . | . | . | . | 47 | 706 | | | | | | | | | | | | | | | | |
| . | . | . | . | . | . | . | . | . | . | . | . | 27 | 76 | | | | | | | | | | | | | | |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | 36 | 812 | | | | | | | | | | | | |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | 30 | 119 | | | | | | | | | | |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | 95 | 1663 | | | | | | | | |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | 25 | 144 | | | | | | |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | 60 | 1286 | | | | |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | 27 | 78 | | |
| . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | . | 30 | 371 |

JERSEY.

Statistical Returns, &c.

ABSTRACT of the Organization of the Parish Assemblies.—(Furnished by J. Gardner, Esq.)

| | The lowest Number of Quarters. Property that admits its possessor to be a Member of the Parish Assembly. | Persons not entitled to be Members of the Parish Assembly from their being rated for taxation under the standard which gives that privilege, but who are Members and vote in the Assembly in virtue of their offices. | | | | Persons entitled to be Members of the Parish Assembly and vote in virtue of their property being equal to and taxed, or exceeding the standard which gives that privilege. | | | | Total Number of Members and the aggregate Number of Quarters they are taxed. | | Number of Members just rated the Quarters stated in the first column, to entitle them to vote. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Police & Parochial Officers. | Aggregate Rate in Quarters taxed. | Ex-Police Officers from having held office. | Aggregate Rate in Quarters taxed. | Police Officers. | Aggregate Rate in Quarters taxed. | Members of the Assembly not holding any offices. | Aggregate Rate in Quarters taxed. | Number of Members. | Quarters. | |
| St. Hélier . . . | 20 | 30 | 183 | 1 | 8 | 11 | 312 | 340 | 13,755 | 382 | 14,258 | 125 |
| St. Saviour . . . | 15 | 24 | 53 | 7 | 30 | 3 | 95 | 101 | 1,653 | 135 | 1,831 | 67 |
| St. Ouen . . . . | 15 | 24 | 67 | .. | .. | 2 | 33 | 22 | 492 | 48 | 592 | 9 |
| St. Martin . . . | 12 | 22 | 52 | 1 | 6 | 1 | 12 | 130 | 1,954 | 154 | 2,024 | 108 |
| St. Peter . . . . | 12 | 19 | 62 | 1 | 5 | 7 | 155 | 73 | 1,439 | 100 | 1,661 | 34 |
| St. Brélade . . . | 12 | 17 | 66 | .. | .. | 10 | 146 | 55 | 1,302 | 82 | 1,514 | 24 |
| Grouville . . . | 12 | 23 | 40 | 6 | 29 | 2 | 24 | 53 | 865 | 84 | 958 | 36 |
| St. John . . . . | 12 | 21 | 62 | 2 | 10 | 2 | 38 | 47 | 706 | 72 | 816 | 24 |
| St. Laurens . . . | 12 | 25 | 60 | 1 | 2 | 1 | 14 | 36 | 812 | 63 | 888 | 24 |
| Trinity . . . . | 10 | 23 | 54 | 4 | 16 | 3 | 49 | 95 | 1,663 | 125 | 1,782 | 46 |
| St. Clément . . . | 8 | 18 | 36 | 1 | 2 | 6 | 106 | 60 | 1,286 | 85 | 1,430 | 24 |
| St. Mary . . . . | 8 | 18 | 36 | 5 | 11 | 4 | 33 | 30 | 371 | 57 | 449 | 16 |

ABSTRACT,* showing the number of persons confined in Her Majesty's Gaol, Jersey, under accusation of crimes and misdemeanours, in each year, from the 1st of January, 1836, to the 27th of April, 1846, inclusive; specifying how many of such offenders were natives of Great Britain and Ireland, how many natives of the Channel Islands, and how many Foreigners; and distinguishing the nature of the offences, the number of those dealt with and discharged by the Police, of those tried who submitted in the first instance, of those dealt with by the Court without a Jury, of those tried before the Enditement or Petty Jury, of those tried by the Grande Enquête, and the number of Acquittals and Convictions; and Military Offenders.—(Furnished by Charles De Ste. Croix, Esq.)

| Year. | Total of Offenders.† | Country of the Offender. | | | Homicide and Infanticide. | Unnatural Offences. | Rape. | Burglary. | Uttering Counterfeit coin or notes. | Larceny. | Forgery and Swindling. | Perjury, or false Declarations. | Assault, Riot, Drunkenness, and Breach of the Peace. | Keeping Houses of Ill Fame and Debauchery. | Contempt of Court. | Petty Offences. | Return from Banishment or Transportation. | Discharged without a Trial. | Numbers tried. | Submitted in the first instance. | Tried by the Court without a Jury. | Enditement, or Petty Jury, only. | Grande Enquête, or Grand Jury. | Acquittals by Enditement, or Grande Enquête. | Convictions, summary or other. | Military Offenders, confined by sentence of Courts Martial. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | English, Irish, and Scotch. | Inhabitants of the Channel Islands. | Foreigners. | | | | | | | | | | | | | | | | | | | | | | |
| 1836 | 239 | 149 | 79 | 11 | 1 | 1 | .. | 15 | 2 | 100 | 1 | .. | 102 | 5 | .. | 8 | 5 | 87 | 152 | 45 | 64 | 32 | 11 | 16 | 125 | 5 |
| 1837 | 257 | 152 | 5 | 20 | .. | 2 | .. | 14 | .. | 118 | 1 | 2 | 88 | 11 | 2 | 8 | 11 | 74 | 183 | 77 | 88 | 8 | 10 | 15 | 148 | 2 |
| 1838 | 263 | 155 | 79 | 29 | 1 | .. | 1 | 15 | .. | 89 | 9 | 2 | 102 | 2 | 1 | 29 | 8 | 113 | 150 | 64 | 59 | 18 | 9 | 19 | 107 | 4 |
| 1839 | 254 | 135 | 94 | 27 | 1 | .. | .. | 8 | 1 | 113 | 2 | 3 | 97 | 9 | 1 | 7 | 8 | 117 | 137 | 44 | 74 | 11 | 8 | 20 | 82 | 4 |
| 1840 | 209 | 119 | 72 | 18 | .. | .. | .. | 4 | 1 | 74 | 6 | .. | 84 | 14 | 1 | 11 | 6 | 105 | 104 | 44 | 52 | 3 | 5 | 8 | 84 | 7 |
| 1841 | 159 | 71 | 72 | 16 | .. | 1 | .. | 17 | .. | 83 | 1 | .. | 40 | .. | .. | 4 | 3 | 62 | 96 | 39 | 27 | 14 | 16 | 12 | 84 | 8 |
| 1842 | 231 | 148 | 74 | 9 | .. | 1 | 1 | 18 | .. | 121 | 2 | 1 | 63 | .. | .. | 5 | 10 | 90 | 141 | 53 | 52 | 22 | 14 | 13 | 105 | 8 |
| 1843 | 269 | 170 | 74 | 25 | 5 | .. | 2 | 35 | 1 | 117 | 2 | .. | 55 | 10 | 1 | 11 | 11 | 90 | 179 | 55 | 80 | 23 | 21 | 23 | 127 | 18 |
| 1844 | 170 | 93 | 64 | 13 | 1 | .. | .. | 18 | .. | 72 | 1 | .. | 33 | 15 | 3 | 6 | 3 | 48 | 122 | 40 | 63 | 10 | 9 | 7 | 90 | 15 |
| 1845 | 139 | 72 | 57 | 10 | 2 | .. | 1 | 12 | 2 | 64 | 1 | 3 | 35 | 2 | 1 | 6 | 6 | 40 | 99 | 33 | 51 | 5 | 10 | 9 | 62 | 4 |
| 1846 to April 27. | 50 | 27 | 20 | 3 | 2 | .. | .. | 1 | .. | 25 | .. | .. | 13 | 6 | .. | 2 | .. | 14 | 36 | 8 | 24 | 1 | 3 | 1 | 33 | 1 |

* The names, and other particulars respecting the offenders, accompanied this abstract; but it has been thought sufficient to publish the abstract. Some errors have been corrected from comparison with the returns in detail.

† These include some military offenders, and some persons delivered up to the British or Foreign Governments. The same name in some instances occurs only once, though charged with more than one offence.

JERSEY.

Communication from J. Gardner, Esq.

*Governor's Office, September* 18, 1846.

Sir,

Having been informed that the Constable of St. Hélier has represented that the Island revenue would not be sufficient to cover the expense attending the establishment of a paid police force, I beg leave to inclose herewith a scheme for paying a police establishment, including a sitting magistrate, to take daily cognizance of, and adjudicate upon, all police charges, without interfering with the revenue under the administration of the States.

As the States, in the year 1779, passed an Act imposing a duty on rum and gin, independent of the impôt raised under the authority of the patent of King Charles II., and have lately increased the duty on wines and spirits, to enable them to construct a new harbour, I do not see how they could reasonably object to a light duty on tobacco, for a purpose so important and beneficial.

I beg leave to observe that, were an increase of the members of the States, to twenty six representatives of the people, two for each of the county parishes, and four for St. Hélier's, independent of the clergy, to be proposed, there would be no difficulty in dispensing with the Jurats in the Legislative Assembly, with the general concurrence of the people; while the boon of increasing the number of representatives in the States for a limited period, in place of the Jurats, who are elected for life, would give universal satisfaction; and the present system of electing the Jurats would be easier dispensed with.

I have, &c.,

*Charles Clark, Esq.,*
*&c. &c.*

J. Gardner.

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Scheme for the formation of a Police Establisment in the Island of Jersey, and the means for its support, without absorbing any portion of the present Revenue.

| | | Per Annum. £. | s. | d. |
|---|---|---|---|---|
| 1 | Police Magistrate | 400 | 0 | 0 |
| 1 | Superintendent | 200 | 0 | 0 |
| 1 | Inspector | 120 | 0 | 0 |
| 5 | Serjeants, at 3*s.* 6*d.* per day each | 319 | 7 | 6 |
| 10 | Constables, 1st class, at 3*s.* per day each | 547 | 10 | 0 |
| 10 | Do. 2nd class, at 2s. 8*d.* per day each | 486 | 13 | 4 |
| 15 | Do. 3rd class, at 2*s.* 6*d.* | 684 | 7 | 6 |
| | | 2757 | 18 | 4 |
| | Clothing for 40 men, at 6*l.* each | 240 | 0 | 0 |
| | Station-house, office, books, and stationery | 70 | 0 | 0 |
| | Forage for Superintendent's horse | 30 | 0 | 0 |
| | Total charge for Police Establishment | 3097 | 18 | 4 |

*Means.*

That no direct tax may fall upon the inhabitants for the support of the police force, nor any of the funds at present at the disposal of the States be diverted for that purpose, the following scheme is suggested; viz., a tax on all tobacco imported and consumed in the Island, at 4*d.* per lb,

| | | | | |
|---|---|---|---|---|
| There were | 163,233 lbs., | imported in | 1842, and 53 packages, | Weight of packages not known. |
| ,, | 263,719 | ,, | 1843, and 71 ditto. | |
| ,, | 282,624 | ,, | 1844, and 92 ditto. | |
| | 709,581 lbs. in the 3 years. | | | |
| | 236,527 ,, annual average. | | | |

3942*l.* 2*s.* 4*d.*, amount of annual tax, at 4*d.* per lb., 3942*l.* 2*s.* 4*d.*

Tobacco pays no duty in Jersey, and sells at about 10*d.* per lb.

The weight of the packages not being known, I allow the weight of them to be equal to the quantity legally exported.

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10, *King's Bench Walk, Temple,*
*January* 29, 1847.

Sir,

Communication from Captain Hay.

The Commissioners for inquiring into the Criminal Laws of the Channel Islands have been referred, by Her Majesty's Secretary of State for the Home Department, to you, for information respecting the result of your late inquiries into the state of the Police under the system now in operation in Jersey. They have accordingly directed me to address the following questions to you, and to request that you will, in answer to them, communicate such information as you may consider it proper to furnish.

1. Have you had any, and what, opportunity of acquiring information as to the working of the police system in England?

2. Have you made any, and what, inquiries into the efficiency of the system of police now established at Jersey, and with what result?
3. If it should appear desirable to introduce at Jersey, in the place of the present system, a paid Police for day and night for the whole Island, and a paid Police Magistrate, what, in your opinion, should the numbers be, and what would be the whole expense?
4. To what extent would the expense be diminished, if such a Police were confined to the parish of St. Hélier's, and to such parts of the parish of St. Saviour's as include any part of the town or suburbs of St. Hélier, assuming the Police Magistrate to be retained?
5. To what further extent would the expense be diminished, if such a Police as supposed in the last question were to act for the night only, still retaining the Police Magistrate?
6. Would you propose that such a Police as supposed in any of the last three questions should consist, in the first instance, partly or wholly, of inhabitants of Jersey?
7. Supposing it desirable that few or none of the inhabitants should form a part of such a Police at first, at what rate do you think it might be practicable to introduce them into the body after it had once been put into operation? Can you state at what rate the members of the Metropolitan Police are renewed?
8. Be pleased to make any suggestions which, in your opinion, would be proper to be considered by the Commissioners.

I shall be much obliged by your forwarding your answer to me to the above address.

I have &c.,

CHARLES CLARK,
*Secretary to the Commission.*

*Captain Hay, &c. &c.*

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SIR, 4, *Whitehall-place, February* 2, 1847.

I beg leave to inclose, according to your request, for the information of the Commissioners for inquiring into the Laws of the Channel Islands, my answers to the questions contained in your letter of the 29th ultimo.

I have &c.,

W. HAY,
*Inspecting Superintendent of Police.*

*Charles Clark, Esq.,*
*&c. &c.*

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*Answers.*

1st. Since my appointment as Inspecting Superintendent of the Metropolitan Police, I have had many opportunities of acquiring information as to the working of the Police system in some of the principal counties in England. I have visited many counties possessing a constabulary, and have had frequent interviews with its officers, and also with influential persons who were well able to judge of its efficiency; and, from all I have seen and heard, I am led to believe that much and great good has resulted from the establishment of a system of Police based upon the Constabulary Act.

2d. Having been directed to proceed to Jersey in September last, to inquire into the state of crime existing in the Island, and to report upon the best method of establishing a paid Police, I had an opportunity, during my stay there, of judging of the efficiency of the system at present in operation; and I am fully impressed with the belief that it is exceedingly ineffective in the prevention of crime and for the due maintenance of the peace in the Island, however much the system may accord with the habits and feelings of the people. The yearly increasing communication with the Island, and the great number of strangers resorting thereto in the summer months, is also an urgent reason why the old system should be abolished, and a system assimilating to that of the Metropolitan or English constabulary be established.

3d. In a Report made by me for the information of the Secretary of State, relative to a paid Police for the Island, I attached a return thereto, of the number of Police which in my opinion would be required, and their yearly expense, a copy of which I annex. [No. 1.] In this Return I did not include the salary of a Police Magistrate, considering that such office might be amalgamated with that of one of the Law Officers of the Crown; as, in all probability, after the establishment of a well regulated Police, the duties of a Police Magistrate would be comparatively light. Assuming, however, that a magistrate were to be appointed, I consider that a salary of 400*l.* per annum would be the amount of pay of such functionary, and which would increase the amount stated on the Return to 2746*l.* per annum.

4th. The Return, No. 2., shows the number of Police required for the town and suburbs of St. Hélier's, and their yearly expense (including the pay of a Police Magistrate), which amounts to 1972*l.* 4*s.*

5th. The Return, No. 3., shows the number of Police required for the night duty, in the town and suburbs of St. Hélier's, and their yearly expense (including the pay of a Police Magistrate), which amounts to 1560*l.* 4*s.*

6th. I should propose that an equal number of inhabitants of the Island, and of strangers, should form the Police on its first formation. The chief officers I would strongly recommend not to be elected from the inhabitants. After a fair trial having been given to the working of the system, it can then be ascertained which of the two classes of constables are the most effective.

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Communication from Captain Hay.

7th. Having, in the reply to question No. 6., expressed an opinion that it would be politic to have an equal number of islanders and strangers in the lower ranks of Police on its establishment, believing that, in that case, a better feeling would be exercised towards them by the inhabitants, and less animosity shown towards the system itself,—if, however, it is considered desirable that few or none of the inhabitants should form part of the Police at first, I think that, if the system obtained the good opinion of the people, it would be objectionable to introduce natives afterwards, unless reliance could be placed upon their performing their duty with perfect impartiality. With reference to the number of changes in the Metropolitan Police annually, the average is nearly 20 per Cent. from the number of men resigning from various causes, being dismissed, dying or worn out and allowed pensions.

8th. I would beg leave in reply, to refer the Commissioners to my Report laid before the Secretary of State in October last, which embodies all the suggestions I am enabled to offer upon the subject of a Police establishment for the Island of Jersey.

WILLIAM HAY, *Inspecting Superintendent of Police.*

No. 1.—RETURN of the Number of Officers and Constables recommended for establishing a Police Force in the Island of Jersey, with their several rates of pay and allowances.

| No | Rank. | Weekly Pay. | Annual Pay. | Annual Allowance. | Total. | REMARKS. |
|---|---|---|---|---|---|---|
| | | *s.* | £. | £. | £. | |
| 1 | Superintendent . . . | .. | 170 | 30 | 200 | Allowance for a horse. |
| 1 | Inspector . . . . | .. | 80 | 6 | 86 | Allowance for clothing. |
| 5 | Serjeants . . . . | 21 | 273 | 30 | 303 | Ditto. |
| 10 | Police Constables . . | 19 | 494 | 60 | 554 | Ditto. |
| 15 | Ditto . . . . . | 17 | 663 | 90 | 753 | Ditto. |
| 10 | Ditto . . . . . | 15 | 390 | 60 | 450 | Ditto. |
| 42 | Total . . | .. | 2,070 | 276 | 2,346 | |

*October* 0, 1846. W. HAY, *Inspecting Superintendent of Police.*

No. 2.—RETURN of the Number of Officers and Constables recommended for establishing a Police Force in the town and suburbs of St. Hélier's, Island of Jersey, with their rates of pay and allowances.

| No. | Rank. | Weekly Pay. | Annual Pay. | | | Annual Allowance. | Total. | | | REMARKS. |
|---|---|---|---|---|---|---|---|---|---|---|
| | | *s.* | £. | *s.* | *d.* | £. | £. | *s.* | *d.* | |
| 1 | Police Magistrate . | .. | 400 | 0 | 0 | .. | 400 | 0 | 0 | . . . |
| 1 | Superintendent . . | .. | 170 | 0 | 0 | 30 | 200 | 0 | 0 | Allowance for a horse. |
| 1 | Inspector . . . . | .. | 80 | 0 | 0 | 6 | 86 | 0 | 0 | Allowance for clothing |
| 3 | Serjeants . . . . | 21 | 163 | 16 | 0 | 18 | 181 | 16 | 0 | Ditto. |
| 7 | Police Constables. . | 19 | 345 | 16 | 0 | 42 | 387 | 16 | 0 | Ditto. |
| 8 | Ditto . . . . | 17 | 353 | 12 | 0 | 48 | 401 | 12 | 0 | Ditto. |
| 7 | Ditto . . . . | 15 | 273 | 0 | 0 | 42 | 315 | 0 | 0 | Ditto. |
| 28 | Total Amount . | .. | 1,786 | 4 | 0 | 186 | 1,972 | 4 | 0 | |

*February* 2, 1847. W. HAY, *Inspecting Superintendent of Police.*

No. 3.—RETURN of the Number of Officers and Constables recommended for a Night Police, in the town and suburbs of St. Hélier's, Island of Jersey, with their several rates of pay and allowances.

| No. | Rank. | Weekly Pay. | Annual Pay. | | | Annual Allowance. | Total. | | | REMARKS. |
|---|---|---|---|---|---|---|---|---|---|---|
| | | *s.* | £. | *s.* | *d.* | £. | £. | *s.* | *d.* | |
| 1 | Police Magistrate. . | .. | 400 | 0 | 0 | .. | 400 | 0 | 0 | . . |
| 1 | Superintendent . . | .. | 170 | 0 | 0 | 30 | 200 | 0 | 0 | Allowance for a horse. |
| 1 | Inspector . . . . | .. | 80 | 0 | 0 | 6 | 86 | 0 | 0 | Allowance for clothing |
| 2 | Serjeants . . . . | 21 | 109 | 4 | 0 | 12 | 121 | 4 | 0 | Ditto. |
| 5 | Police Constables. . | 19 | 247 | 0 | 0 | 30 | 277 | 0 | 0 | Ditto. |
| 5 | Ditto . . . . | 17 | 221 | 0 | 0 | 30 | 251 | 0 | 0 | Ditto. |
| 5 | Ditto . . . . | 15 | 195 | 0 | 0 | 30 | 225 | 0 | 0 | Ditto. |
| 20 | Total . . | .. | 1,422 | 4 | 0 | 138 | 1,560 | 4 | 0 | |

*February* 2, 1847. W. HAY, *Inspecting Superintendent of Police.*

To Messrs. Ellis and Bros, Royal Commissioners for the Island of Jersey. JERSEY.

Memorial of P. Lemprière, Esq.

Gentlemen,

The respectful memorial of Philip Lemprière, of the persuasion of the people called Quakers, No. 2, Parade Place, showeth,—

That the Royal Court and the States of Jersey did, in the year 1840, refuse to register an Order in Council, giving force of law to the third and fourth of William the IVth, chap. 49, which order had been solicited by memorials, and audience granted to that effect to a Committee of the Society of Friends by the then Secretary of State, after hearing the distressed state of your memorialist who was then suffering an imprisonment of ten weeks in a most dangerous state of health. The particulars of the said imprisonment will be seen in the Act of the Court of the day of November, 1839, in the case of Halfyard *versus* Guillemotte, when he was called as evidence. Yet your memorialist had been previously heard as evidence in another case on his solemn declaration in lieu of an oath in Shave *versus* Russell, as the Act will show, January 25, 1837; and without further reasons the inferior number of the Court set aside the judgement of a full Court. Your memorialist was liberated on bail in the month of January, 1840, pursuant to the judgment of a full Court enacted on a communication of the Secretary of State, through the Lieutenant Governor. The States took the case in hand, and offered to make an Act that would contain the same enactments as the Acts of Parliament objected to; but, instead of which, they surreptitiously withheld the part providing for people of the persuasion (yet not members to the temporal benefits of the society); and also omitting the clauses giving a general application to the Act in all cases where an oath is required. Your memorialist forwarded the needful information to the Council against the Act of the States in that form receiving the Royal Sanction: so that to this day the Island of Jersey is without law on that subject, to the great loss and suffering of your memorialist: for some of the advocates present at a sitting of the Court declare that evidence on affirmation in cases of crime would have no effect; and to these declarations of the gentlemen of the bar your memoralist considers himself indebted for a series of robberies, escalading, and breaking into his premises, with personal ill treatment, practised against him ever since. The said Halfyard, in whose former case the advocates mentioned the above cited opinions, was seized and presented before the Court by Centenier Sorrell, for two robberies of timber found on his premises. The theft had been committed by the aid of a man in his employ in the night: yet the Court, on hearing the conclusions of the Queen's Procureur, admitted Halfyard to bail, in the sum of five pounds. The other man is still in prison. Witnesses have been twice called: yet, as the cause made no progress, when the prisoner Halfyard was allowed to find bail, he felt so far encouraged from the security he felt in your memorialist not taking an oath, as actually to solicit your memorialist whom he had robbed to become his security, and this in open Court. Since that time he has by bargains and strong drinks been enticing the other witness to his employ, and annoying your memorialist publicly with loud and improper language, and in one instance accompanied by the wife of his accomplice. She said, staring and pointing at your memorialist, "that is the *crapau*, I shall stab him in the same way the woman Le Gendre stabbed the Centenier Le Cronier." A man returning from his work heard this threat; and Constable Le Sueur was informed of it next morning. Effects found of two other robberies are still in possession of Centenier Sorrell. His reluctance to do anything in this case arises from his knowledge of your memorialist's refusal to take an oath. A fall of a large takle found on one Deluche, who was for that offence detained in the hospital by an Officer of Police, was released after two weeks confinement. Your memorialist can positively declare and prove the takle is his, and that he has been obliged at different times to suffer and abandon claims, and can obtain no protection for either life or property: for, when the constable will not interfere officially, there is a process of law called "*Jurer les Trèves*," which is to swear in open Court the life of the applicant is in danger. Then the Court orders the aggressor to furnish bail for his good and peaceful behaviour towards the injured party; but my persuasion against swearing make the said process of no avail. The above cited and many other grievances too long to detail, your memorialist begs respectfully to solicit the kind offices of the Royal Commissioners to interpose in the matter, the remedy that in their wisdom they shall deem the more salutary; for the authorities here have shown at all times a constant determination to oppose the salutary and paternal enactments from the mother country, both in conscientious and personal liberty, —recently the Habeas Corpus to wit. Yet, in my case, for refusing to comply to take oath, on account of my persuasion, you will see that I have been most grievously injured and outraged, notwithstanding I was most courteous in my conduct to the authorities.

And there are a great many other important matters that ought to come before you, and which up to this time I believe have not reached your ears as Royal Commissioners.

And your memorialist will ever pray, &c.

*September* 19, 1846. Philip Lemprière.

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To Messrs. Ellis and Bros, Her Majesty's Commissioners of Enquiry into the Criminal Laws and Institutions of the Channel Islands.

*St. Hélier's, Jersey,*
*September* 21, 1846.

Gentlemen,

Communication from J. Carré, Jun., Esq.

Being absent from this Island when you commenced the labours of your Commission, I have not had an occasion of being present at any of the sittings except on Saturday last; and, on my return home, I betook myself to put in writing my views on the Criminal Institutions of this Island, and of their defects, and likewise of the abortive attempts which have been

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Communication from J. Carré, Jun., Esq.

made to attempt a reform—which had always failed in consequence of party feeling and want of union on the part of the people. So much so, that it has become the settled opinion of all practical reformers that no reform will ever be accomplished through the efforts of Jerseymen, or by means of the established authorities of the Island—that no reformation worthy of the name will be achieved *unless forced upon them.* But the Institutions contain within them the elements of correction, so that, without overturning the Institutions, it is possible to so remodel them as to render them in harmony with the present wants of the population. Not being aware that your labours were at an end, I have gone to town intending to present you my written views, and to solicit the favour of a hearing this morning: but, finding that you had left the Island yesterday for Guernsey, I have recourse to the only alternative left me, to send you my manuscript by post, which I beg to submit to your attention and perusal. One thing must strike every impartial observer of the laws and of their administration, and of the institutions, that it is really surprising how, with so many elements of discord, the people have been so quiet and orderly. This is the only favourable feature with Jerseymen, but it is an important one, that they are patient, quiet and orderly; else God knows what would be the consequence; for the whole system, political, civil and criminal, is rotten to the very core.

Apologising for intruding my individual views,

I am, &c.,

JOHN CARRÉ, Jun.

Address,

*John Carré, Jun.,*
*St. Hélier's, Jersey.*

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That the laws of Jersey, both criminal and civil, need reform to adapt them to the requirements of our age and civilization, and that the institutions themselves require great and important changes in the way of *remodelling*, no Jerseyman denies; but the great error of most of those who have complained against the laws and institutions of this Island has been to attack the institutions themselves instead of their defects, to attack persons instead of their measures, and the assuming the laws of England to be perfection itself, and then, by a comparison of those laws with ours, condemning our's merely because they differed from the English laws; not because, after a faithful and careful examination, they had been proved to be essentially bad. Now, when a wholesale condemnation of their laws and a total subversion of their institutions were thus avowed and insisted on by their opponents, Jerseymen had a right to demand the reasons, the why and wherefore, of such measures; to demand proof of the evidence of the perfection of the English laws and institutions; to demand likewise proof of the imperfections of the Jersey laws and institutions; such proof to be laid down in a clear and lucid and comprehensive manner, so as to carry conviction to the mind that things are really so, not by the undecisive, unsatisfactory process of taking an assumption of perfection for a position, however false, on the one hand, and then from that position pass a partial judgment, and hurl a sweeping denunciation on the other, merely for differences of detail. I say of detail, because in essence, in principle, our criminal institutions are precisely the same as those of England, and, where they differ (except in two important particulars, of which I will speak presently), that difference is all in favour of ours, and are improvements on those of England.

For example, the *appeal* from the verdict of the "Enditement" to that of "la Grande Enquête" is a beautiful institution, and is a proof of the interest shown to guard against precipitate and erroneous judgments, and of surrounding an accused person with every possible safeguard. This is an institution which exists in no other place but Jersey; and because of its singularity it has been condemned by some, chiefly it must be confessed by Englishmen, who cannot bear anything that does not exactly tally with their notions of propriety and perfection; but by Frenchmen, who have witnessed the imperfect, and in many particulars, most objectionable practice followed in France, the institution of an appeal in criminal cases from one jury to another has been extolled as one of the most sublime conceptions of the mind of man, as a grand and majestic protection against error or oppression. Indeed, when it is considered that, in a miserable dispute for a few pounds, shillings, and pence, an appeal lies in civil cases from the judgment of the inferior Court, composed of the Bailly and two Jurats, to that of the full Court, composed of seven or more judges, and from the decision of the latter to Her Majesty in Council, on what principle of reason or justice can it be objected that a supposed criminal, whose reputation for life or even his life itself is at stake, should be denied even the protection of *one appeal* ere the iron stamp of the law sets its brand of infamy on his devoted head? Is not the reputation of a man or woman, and his or her future prospects for life, of much more importance than the gain or loss of a few pounds to one or other of two disputants? Is not the life of a human creature of much more value and importance than the deciding which of two "*chicaneurs*" shall be constable or centenier of a parish?

Another improvement in our system is, that the Jury are *not bound to be unanimous.* It has been admitted by law authorities, that the English law, in this respect, is a departure from the original institution—which was, that *twelve* OUT OF A GREATER NUMBER must agree; which is exactly consonant with the Jersey law as regards the verdict of the "Grande Enquête," that body being composed of twenty four jurors, of which number *twenty* must agree to give a verdict of Guilty; but, even in this particular, the consciences of the jurors are perfectly free from force or violence, because, in case there be not twenty that do agree, they are not shut up, as would be done in England, until they did agree: no, but, respected and uncontrolled in the event of a disagreement among the jurors, each juror confides his opinion to the Bailly, who, after he has heard them all, declares whether there be a sufficient number agreeing; if there be not twenty, then the prisoner has the benefit thereof. A good deal of misconception has prevailed as respects the number necessary to conviction or acquittal; and by some it has been

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Communication from J. Carré, Jun., Esq.

deemed ridiculous that five or six dissentients on a body of twenty four jurors sufficed to acquit an accused party. But the institution is not, in reality, that five may acquit, but that twenty must agree in order to convict. It stands to reason that, the law requiring the unanimous verdict of twenty of the twenty four jurors, if a lesser number than twenty do agree, that the prisoner must necessarily have the benefit thereof. But the misconception does exist; and the manner in which the Bailly oftentimes announces the opinions of the jurors has tended much to fortify that idea: thus the President will say, " il y en a un nombre suffisant pour déclarer le prisonnier innocent," instead of saying, "Il *n'y en a pas* un nombre suffisant pour déclarer le prisonnier coupable." By a reference to what takes place after the Bailly has announced the decision of the " Grande Enquête," it will be seen that the construction I have given is correct, and agrees with the whole theory of the institution. After announcing the Jury's verdict, the Bailly calls on the Procureur Général, who draws his conclusions to the effect that the prisoner be discharged. Now, if five dissentients did acquit, of what use would it be to call on the prosecutor to know his wish in the matter? Would it not suffice for the Bailly to say, " Prisonnier vous pouvez vous retirer," since he would be free by virtue of the verdict? But no; because twenty do not agree, no conviction follows, and the prisoner receives the boon of a liberation at the hands of both the prosecutor and the Court, in consequence of the doubt implied by the non-unanimous verdict given by the jury.

It appears to me that, in point of fact, the " enditement " represents the institution of the " grand jury" of England; because the prisoner is not treated as a supposed criminal until after the verdict of the " enditement;" after which verdict he is generally handcuffed, and reappears before the Court surrounded by bodyguards, called hallebardiers; and from the wording of the accusation, when presented before " la grande enquête," thus " endité criminellement par l'enditement de la paroisse de—," which in English, means " against whom a true bill has been found." If a prisoner be acquitted by the *enditement* he is instantly liberated, the same as in England if no bill were found; and, if he be found guilty, that is *endité*, he may submit to judgment on that finding—or he may demand " le bénéfice de la grande enquête du pays," which exactly corresponds with the English system of " appearing before his peers," of " being tried by God and his country."

Why the Jury of Appeal is called " Grande Enquête," does not exactly appear; it may be because of its being composed of a greater number of persons than the enditement, but, more probably, because of its being composed of " principaux de paroisse." And it is because of its being composed of " principaux," that some who dream of nothing else but English laws and institutions have wished the " grande enquête" to sit first; then the enditement to follow. The terms of denomination used by the English journals here, of " petty jury " and " grand jury," are not legal or correct terms, but an Anglicanism or borrowing words from England. Besides not being satisfied with the assumed perfection of the English institution nor convinced that it is the best of two systems, Jerseymen prefer the guaranty of an appeal on the question of fact, which cannot be denied to be a great safeguard, to the merely matter of routine of English grand juries, who only decide whether there be sufficient grounds to prosecute. In our opinion, such an inquiry is more properly in the province of the magistrate, an institution which Jersey has not. But the appointment of magistrates to hear complaints and to commit prisoners to stand their trial cannot be a sufficient reason for the abolition of one of the juries, as propounded by Mr. Advocate Hammond, but would be an additional guaranty against improper imprisonments previous to trial: and the institution of a sitting magistrate to hear and investigate complaints, would also do away with the illegal assumption of power exercised by the Police, of liberating persons of their own free will.

Now, as regards the *composition* of the juries in criminal cases, two grand defects in our system appear prominently. 1st. That the " officiers du connétable " compose the *enditement*, and 2nd. That the Procureur Général, the prosecutor of the prisoner, himself selects the persons who are to compose " la grande enquête." The composing the enditement by police officers might have answered very well in bye-gone ages, when the population was small and the calls and exigencies of society were different to those of the present day. Then " les officiers du connétable " had not the right of arrest, but merely to assist their chief, and were more properly his immediate advisers. Thus the institution did not appear so objectionable in principle as it does now that their powers have been increased. But, although some reason can be shown by a reference to what police officers were formerly (for the " officiers du connétable " have always been considered as the advisers of the constable; which fact appears in the oath of office, thus: acting agreeably " à l'avis et bon conseil des principaux et *officiers* de votre paroisse ") as an excuse for their composing " l'enditement," it is difficult to find any reason for the anomaly, that the prosecutor choses the members of " la grande enquête," except in the severity of the laws and institutions of former times, or the grasping disposition at power, which may be termed " *envahissements* " of the Crown officers. I suspect the latter supposition to be the true one.

The police officers have, however, no wish to retain these onerous duties; they would on the contrary rejoice at being relieved from them: and the present Crown officers have likewise no wish to retain the power of selecting the members of the jury. The Solicitor General caused a *projét de loi* to be presented on the subject to the States to reform the law on the constitution of the juries; but, in consequence of a senseless attempt to abolish one of the juries, which in part succeeded, that learned gentleman abandoned the matter; and it has not since been taken up. The reform proposed by the Solicitor General was amply sufficient, doing away with the two grand defects previously mentioned, and was in accordance with the views expressed by Mr. Advocate Godfray before the Commissioners. The qualification for jurymen of the *enditement* was proposed to be from six quarters upwards, and under twenty quarters on the rate list; and for jurymen of the " Grande Enquête" from twenty quarters and upwards. In

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both cases, when a jury were to be called, the Sheriff to have the names of all the persons subject to serve as jurymen of the parish from which the jury were to be called placed in a box or urn; from which a certain number were to be drawn by him in the presence of the Bailly and Crown officers. In consequence of the great increase of voters now on the list, the qualification could be fixed at from six quarters to twenty quarters for the "enditement," and all persons registered above twenty quarters on the parish rate-list, for the "*grande enquête.*" These changes in the law would be well received by the whole population; but the abandonment of one of the juries would, I am convinced, be objected to by the great majority of the people: for, although the greater portion of those who appear before the juries are not natives, but strangers to the soil, still the inhabitants would not depart from what they consider, and I believe with much reason, an important guaranty and safeguard.

Another great advantage to an accused person exists in the manner of constituting *la grande nquête,* which is, that only eight of the jurors are taken in the parish where the crime was committed, the remaining sixteen being called in equal numbers from two adjoining parishes, thus having sixteen jurors strangers to the parish where the crime was committed, and perhaps all of them ignorant of the commission of said crime, consequently not influenced by partial reports or idle conversation on the subject, previous to appearing in their place at Court.

There is another point to which I would advert, it is, "the changing the *venue* of the Jury," for which there is, it seems, no law or authority. I know of only two instances. The first was on the prosecution by the Lieutenant Governor, the late Major General Thornton, of Mr. Advocate Godfray, then constable of St. Hélier's, for "misprision of treason;" in which, Mr. Godfray threatening to challenge the "enditement" of his parish, which was composed entirely of political opponents, the Procureur Général called the enditement of St. Saviour's, the parish which Mr. Godfray now represents. The second case was that of Mrs. Le Gendre for the murder of the late Mr. Le Cronier; when, as Mr. Le Cronier was a police officer, it was not thought advisable to have the jury from town, and the Procureur Général summoned the *enditement* of St. John's parish. Now, although in both these cases the change of *venue* was most just and reasonable, and all to the advantage of the defendants, still it must be confessed that the change ought not to depend upon the will of the prosecutor, but should be authorised by law, and the law ought to express the mode of proceeding in the matter. It seems to me that the prosecutor ought not to have the power of changing the venue except in cases where the interests of the Crown were involved, and then only after having made a representation to the Court, and obtained their sanction; and that, in all other cases, the venue ought not to be changed, except at the request of a prisoner's counsel made in Court; the Court alone to have the power to state from which parish the jury is to be drawn.

It would be advisable that the Criminal Court held sessions, as is done in other places, and not mix up criminal and civil causes together, as is now done, to the detriment of civil suitors, who are oftentimes obliged to return home with a host of witnesses without having had a hearing, although the cases had been summoned for that particular day. But, the Crown officers having the privilege of presenting their causes first, it has been alleged that, from motives of "*calculation,*" causes have been thus presented to prevent other causes from being called before certain magistrates, whose judgment was feared, and in order to cause them to be heard before other Jurats, whose judgment was desired and sought. This is called "calcul de jours," calculation of days; and the practice has been repeatedly alleged to take place. The officers of the Court or Advocates could explain the matter. I have seen the charge made repeatedly in the "*Chronique de Jersey,*" and "*l'Impartial.*" I have seen shown how and by what means certain causes had been delayed, in order that others might be called for a hearing in the presence of Messrs. So and So, who were to be Jurats of the day. Not having taken the trouble or had the desire to ascertain how far such was the case, I cannot give any explanation; but the gentlemen who have advanced the charge, or some of their friends, may be able and willing to furnish the explanation. This much I do know, that, when certain causes were to be called for a hearing, chiefly political causes I admit, that it was usual to cast an eye on the magisterial bench, to see "who were the men of the day," and immediately predict how the case would be decided; and, moreover, that rarely was the prediction falsified.

The constitution of Jersey views the connétable as a person of importance, somewhat akin to the mayors of England. The office is held to be most honourable, the English word constable not conveying to the mind the meaning of the office, its attributions, or the nature of its powers. This is in consequence of the amalgamation, or "*mixtion de pouvoirs,*" which prevail here. The connétable is both civil and political chief of his parish. The constable is always a party man, be he Rose or be he Laurel; it is not, therefore, too much to suppose, for whoever has studied human nature will readily conceive the possibility, that the constable will be disposed to be lenient with those he knows to be his friends, and to be cold, *dédaigneux*, if not absolutely provokingly harsh towards his political opponents; and it is notorious that great partiality and injustice has prevailed and does prevail in consequence of party predilection or animosity. In a small community like this, where every one is known, the espousing the cause of either party is sure to be observed, because the elections, being numerous, are consequently frequent; and, as the "officiers de connétable," be they Rose or Laurel, are the most active of canvassers, every voter is visited, and the opinions and feelings of all are known to them. It has been observed by several persons heard before the Commissioners, that favoritism or injustice has been the consequence of the elector's vote at the poll; this is so notoriously true, that it has been publicly stated and avowed in the States at one of their recent meetings, by Mr. Advocate Godfray, in his place as constable of St. Saviour's, that he had been "connétable" in three different parishes, in St. Helier's, in St. Martin's, and in St. Saviour's, that he had been in the minority and in the majority, that in the three parishes he had seen the same principle to prevail, that when his party were in the minority his opponents acted unjustly

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towards his friends, and that when in the majority his friends were unjust towards their opponents. This frank avowal of the learned gentleman could not, cannot be gainsayed: but what is to be done? Here is the difficulty: few appear disposed to take up the subject because of its importance and magnitude, and the opposition which is likely to be the consequence of attempting to reform the abuses complained of. The remedy, however, is simple, though severe, the separation of the political and civil powers throughout our institutions.

By depriving the Police of their political powers, I do not mean to disfranchise them, and not allow them to make use of their undoubted right as other citizens, but that the civil and political functions be severed, that they be not members of the Parish Assembly by virtue of their office; for it is a matter of fact that the "assemblées de paroisses" at which the police officers always make it a point of duty to attend, and where they exert a very great influence, far from meeting for the purpose of making a just and honest distribution of the rate (the ostensible purpose, nevertheless), on the contrary, meet there, bent upon nothing else but the fortifying one party and damaging the other. Thus the parish of St. Martin's has been for the last twelve years the arena of the most disgraceful scenes and the greatest injustice, sometimes by the Laurel against the Rose, sometimes of the Rose against the Laurel. At the present moment, through party opposition, that parish is deprived of its constable and one of its centeniers. Nearly all the parishes have been in the same state of ferment within a certain number of years: and many of them have been, by party opposition, deprived of the services of their elected chief or chiefs, sometimes by the hitherto dominant party who had lost the day, sometimes by the party in the minority, who alleged injustice or corruption. In the parish of St. Laurens, last year, the Laurel majority actually struck off the rate list the name of their constable, thus disfranchising their own chief because he was a Roseman; and, in the parish of Trinity, the Rose majority did the same thing to an ex-constable of that parish, who paid his rate as "principal," the son in law of one of the Jurats of the Royal Court, because he was a Laurel man. Now, in all these proceedings, the several polices take an active part, and are, in fact, the chief abettors of these unseemly proceedings.

Edward Nicolle, Jun., Esq., is of opinion, that the police is not an efficient police for the town and parish of St. Hélier's, in consequence of the great increase of population and commerce. Mr. Nicolle is reputed a Rose man; and this candid opinion of his on the subject, is the more worthy of respect and consideration; but that gentleman is known as a thorough reformer; he has stood the brunt and even recriminations of his own party, because of his honesty to avow defects and anomalies in the institutions, and of his unflinching advocacy, boldness and courage in the cause of reform. Mr. Nicolle's opinion is held by very many of the town people, and the only obstacle in the way of the establishment of a paid police has been the expense. I have myself, both in writing and by vote in the parish meetings, opposed the establishment of a paid police; but the opinion is gaining ground, and there exists a very prevalent feeling that something in that way must be done; for it is too much to expect that the gentlemen who compose the police, most of whom are in business, and consequently have their own interests to attend to, can sacrifice by night and by day the requisite time to effectually perform the duties of police in a population so extensive as that of St. Hélier's. Some of the gentlemen of the town police have, I believe, expressed themselves not opposed to the appointment of a limited number of paid policemen, to act in concert with the present honorary police, and to be under the control and orders of the constable. But it would be objected against this expedient that the honorary police would resign what is vulgarly called "the dirty work" to the paid police, and reserve the honorary, that is political work, to themselves; and, perhaps, play the "gentleman" while the others would only be "*hommes de bras*."

If the present system of honorary police be continued, then that body must be considerably increased. The chief obstacle in the way of an increase of the police in town has been, the additional political power that such an increase would give to the dominant party. Hence, the evident necessity for a separation of the political and civil functions. As to the country parishes, whose populations are small, the present unpaid police could continue to exist as hitherto (but divested of their political functions), as it is usually the practice, in all the parishes, to choose persons living in different districts, thus dividing the police force as much as possible in the various vingtaines or cantons. It is my opinion that much good would result from the severance of the civil and political functions of the police throughout the island; that it would be the means of allaying much of the effervescence and spirit of party which unhappily exist to a great extent. As a demonstration of the trickery to which persons are sometimes obliged to have recourse, in order to regain or assert their rights, I will instance the case of Mr. Gallichan (son in law of Judge Le Maistre, referred to in the foregoing), and three other voters who had been struck off the list by the Parish Assembly of Trinity; it has been asserted that the Solicitor General, who was to present their claim to the Court, actually carried the *remonstrances* three months in his pocket, watching for an opportunity to present them in the ABSENCE of Mr. Advocate Le Sueur. One day, as his learned opponent was enjoying the benefit of open air, the Solicitor General pulled out of his pocket the "remonstrances," and got them admitted, and his four friends rated. As soon as Mr. Le Sueur heard what was going on at Court, he hurried off thither; but came "just in time to be too late;" he, however, addressed the Court on the subject, complained that the claims had been received, and the parish condemned in costs *exparte*, and on that account demanded the suspension of the judgment just given. Now mark the result! the two Jurats of the day were, one Laurel, the other Rose; and their judgment was precisely in accordance with the political views they and their friends entertained. Jurat Le Gallais said, the same Court could not undo what had been done, but only the superior Court, which was correct in law; Jurat Arthur, on the contrary, was for suspending the judgment just given, for the reasons assigned; when the Bailly, by the casting vote, maintained the judgment rendered, and set the matter at rest. It is not merely in the election of

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municipal officers that party spirit shows itself; so powerful is the influence of these political bodies of police and their friends, that they control the general elections and materially assist in bringing about the election of their staunchest friends to the bench.

At the present moment, of the twelve Jurats now sitting on the bench, only seven have walked over the course without opposition, namely, Messrs. De Ste. Croix, Edw. Nicolle, Ph. W. Nicolle, Bertram, Le Couteur, Picot and Pelgué. But even these seven gentlemen, although all of them most worthy men, and enjoying the esteem of all for their domestic virtues and high standing, had been, with the exception of Mr. Picot, party men, and would have been opposed on that account had the Laurel party considered themselves sufficiently strong to risk a contest. Of the other five Jurats, all of them have been called to the bench by a party majority, or, what is still worse, by party intrigue and chicanery. Jurat Marett, a Laurel man, obtained his seat by judgment and contestation, in spite of the electoral body, he being in an enormous minority: the next, Mr. Le Maistre, at the time of his election was a Rose man; and on that account his being sworn to office was opposed by the Laurel party, who alleged, among other objections, his being illiterate and otherwise incompetent to fulfil the duties of the office. Although that gentleman obtained a majority of upwards of 200 votes, he was kept out of office for about two years, after which time it was rumoured that his political views had undergone a change; and the Laurel party, in the hope that in future he might be "a Laurel man true," all at once found him a most "*competent*" person, dropped the opposition; and he was sworn into office. This was the first election in which I was qualified to vote; and I voted for Mr. Le Maistre. The next, Jurat Bisson, carried his election by a triumphant Rose majority. I likewise voted for that gentleman. Jurat Le Gallais was elected by a small Laurel majority. I likewise voted for Mr. Le Gallais, not that I approved of his party, but because that gentleman had practised at Court for a great number of years, and that, from his extensive knowledge of our laws and customs, I considered him eminently qualified. The last, Jurat Arthur, carried the day by an immense Rose majority, the consequence, as the defeated party allege, of the partial distribution of the rate in the preceding January. I likewise voted for Mr. Arthur. I have not had occasion to judge of him at Court; but in the States he is one of the most liberal in his views and vote. Of the seven Rose Jurats first mentioned, I have voted for those of them who have been elected since I have been qualified to vote, except one or two. I am, and in principle, have always been a Rose man; but attachment to my party will not prevent, and has never prevented, me from avowing the truth, because indeed the complaint of reformers is not against men but against the system. By Rose men, I mean the movement or reforming party; but I regret to say that, when in power, the Rose party have not always been reformers, but that, having the majority, they have oftentimes acted as though the struggle had only been to overturn their opponents and occupy their places; and the Laurel party, when in power, have done the same, finding every thing in the most perfect condition because they had the mastery. And it would not be too much to avow that, had that party succeeded in electing their candidate at the last election for a Jurat, and thereby had the prospect of gaining other elections, they would have opposed everything in the shape of real and substantial reform, as they have formerly done. A circumstance worthy of observation is, that, although the Jurats must have had innumerable occasions of witnessing the imperfections of the laws, not one of them has ever presented any amendment to said laws, in his place in the States.

Although many would willingly give up their right to vote in the election of Jurats, I verily believe that any alteration in the mode of election or infringement of the right of election would be disapprobated by the great, very great, majority of the people; and this feeling is not entertained by one party alone but by both, yet less strongly by the Laurel than the Rose party. Indeed, it would appear more urgent to establish the qualifications necessary in the candidate, than to change the mode of election. The Bar should be thrown open, and the future selections of Judges to be confined to persons taken from among the Advocates. But then it would not be fair to do away with the present Jurats, and *immediately* choose two Judges from the present limited number of Advocates: besides, that would not be an improvement on the present system, because the gentlemen of the Jersey Bar are all party men, and much more versed in the system of intrigue and chicanery that prevails here than in the general principles of jurisprudence. It would suffice for the Government to renew the practice of sending the justiciers itinerant to hold sessions here once a-year, and to revise the judgments of the Court; an institution recognised by our Constitution. The sending justiciers itinerant to revise the judgments of the Court would be a most salutary check against the errors of judgment so much complained of, and be a bar against political resentments. Were the practice spoken of revived, there would then be no necessity for having so large a number of Jurats as twelve; two Judges with the Chief Justice would suffice to form the Court; and, in order to maintain to the people the privilege of appeal, the itinerant Judges might be considered the court of appeal in all cases where, according to law, appeal lies to the superior Court, and from the judgments of the itinerant Judges an appeal to Her Majesty in Council, as allowed by law. In order to reduce the number of Judges to two, the present Jurats could be allowed to retain their seats in the States during life, and the electoral body be required to choose two out of the twelve to form the new Court; and that afterwards, any vacancy on the bench be filled up by the election of persons chosen from the Jersey Bar. The two Judges to have fixed salaries of so much per annum, and, although allowed to sit in the States, and even to offer their opinions and views on questions of law, not to be allowed to vote. As to the reconstruction of the States in consequence of the reform of the Court, the proposition made in the States by Mr. Advocate Godfray, when he was constable of St. Hélier's, which at the time was much approved of, and would still be approved of by the great majority of the people, was this—That the twelve Jurats and twelve Rectors be continued for life members of the

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States; that, on the demise or resignation of either Jurats or Rectors, the places of Rectors be filled up by representatives chosen by the parishes wherein the vacancy occurs; and of Judges, by the parishes having the largest population in rotation; and, in definitive, that the States, after the demise or resignation of all the Jurats and Rectors, be composed of representatives triennially chosen by the parishes, each parish to send 3 members, and the town to be allowed for excess of population 4 additional members; thus composing the States of 40 members, instead of 66 as at present. But the reform proposed by Mr. Godfray, although good so far as it went, did not go far enough, because it proposed to continue the constable or municipal chief a member of the States, and left the constitution of the "assemblées de paroisses" untouched, instead of severing the political and civil functions throughout the institutions. For, if it be an axiom that the Judge ought not to be a legislator, it must with still more force and reason be maintained that "a political body of police" is, and must of necessity be, a faulty institution.

Several attempts at reform have been made; but, in consequence of opposition on the one hand and indifference on the other, nothing has been done. The first attempt, in my recollection, was made by Mr. Godfray, constable of St. Hélier's; but, in consequence of his proposing to remodel the Court by the election of *two judges* chosen from the Jersey Bar; a formidable opposition was raised against the project because of the limited number of Advocates, which caused the Bar to be called after the name of the sinecure seats of the old British Parliament, a rotten borough! The Bar should have been previously thrown open. The next attempt, some time after, was the establishment of a "Reform Society," to be composed of electors, without reference to party, who maintained and held the separation of the judicial and legislative functions necessary, and the insisting on the States being composed solely of representatives triennially elected: after the first election, one-third to go out at the end of the first year, these to be those who had obtained the lesser number of votes; another third at the end of the second year, and so on; thus renewing the *personnel* of the States in a easy and practicable manner, as is done in England in respect of the municipal corporations. The States thus reformed to choose their own Speaker or President, subject to the approbation of Her Majesty in Council, to be conveyed through the Lieutenant Governor; the Governor retaining "a veto" on the Acts of the Assembly, as hitherto. This society obtained a certain footing in two parishes, St. Hélier's and St. Brélade's; but all attempts which the Committee made to introduce it into other parishes failed, particularly in the parish of St. Lawrence, then a stronghold of the Laurel party; they approved, said they, the principles, but would not bind themselves in any manner; the same result followed an attempt to introduce it into Grouville, then a Rose parish. It was evident that neither one or other party honestly and conscientiously desired a reform; men were men of party; and they combatted each other for the mastery, without knowing why or wherefore, save the love of dominancy; for they had not, and never have had, any distinct political principle to fight for. It is that which makes the contestations of Jersey appear so ridiculous, that neither party has any particular or distinguishing principle in view. Nevertheless, soon after the formation of the Reform Society, a vacancy occurred on the Bench. I, as secretary, addressed circulars to the two candidates to know their views on the plan of reform; and, the answer of the candidate of the Laurel party being the most satisfactory of the two, the members of the Society voted for him. This was Mr. Le Couteur, the present vicomte, who carried the day by a triumphant majority of upwards of 200 votes!

Some time after, through the opposition of adversaries and the coldness of professed friends, the Society gradually dwindled away. Another attempt was made, some years after: a public meeting was called which was numerously attended; which meeting was presided by Mr. Edw. Nicolle, Jun., previously named, at which a petition to the States was agreed to; the petition obtained a goodly number of signatures, and was, I believe, presented to the States; but nothing has been done, and the matter has been left at rest. The love of power with the leading men of both parties has been the cause of the failure at every attempt to reform the Court and the States. There are few really liberal men in the States. I believe, Judge Edward Nicolle is favourable to a separation of the judicial and legislative functions, as likewise Judges Marett, Le Maistre, and Le Gallais.

In respect to the constitution of the "parish assemblies," a good deal could be said, and the defects of the institution clearly demonstrated. For efficiency, an elective municipality, as in England, would be far more effective for the purpose intended, of which the Mayor or Connétable would be President. The members of the "assemblée de paroisse" ought not to go there *in right of their property*, but by the election and choice of their fellow townsmen; and a public body of twenty four men thus chosen would fulfil the duties of their office much more efficiently and with more impartiality than the 300 persons who now have a right to attend there by virtue of their property; for it cannot but appear most probable that all these gentlemen will go there on the rating days to protect themselves, and throw the burthen of the rate on their poorer fellow-citizens, who have no vote, and who, although allowed to be present, cannot speak except it be on the question of their individual rate. But, as this question does not enter into the objects of the present enquiry, I will not pursue.

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# SECOND REPORT

OF THE

# COMMISSIONERS

APPOINTED TO INQUIRE INTO

## THE STATE OF THE CRIMINAL LAW IN THE CHANNEL ISLANDS

---

# GUERNSEY.

---

Presented to both Houses of Parliament by Command of Her Majesty.

---

LONDON:

PRINTED BY WILLIAM CLOWES AND SONS, STAMFORD STREET,
FOR HER MAJESTY'S STATIONERY OFFICE.

1848.

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## COMMISSION.

VICTORIA by the grace of God of the United Kingdom of Great Britain and Ireland QUEEN Defender of the Faith. To Our trusty and well beloved THOMAS FLOWER ELLIS, Esquire, Barrister at Law and THOMAS BROS, Esquire, Barrister at Law, greeting.

WHEREAS We have deemed it expedient for divers good reasons and considerations that a Commission should forthwith issue for enquiring into the Criminal Laws now in force in Our Channel Islands and into the constitutions and powers of the Tribunals and Authorities charged with the execution of such Laws. Now KNOW YE that WE having especial trust and confidence in your wisdom and fidelity have assigned nominated and appointed and do by these presents assign nominate and appoint you the said THOMAS FLOWER ELLIS and THOMAS BROS to be Our Commissioners to go into our said Islands for the purposes aforesaid. And for the better effecting the purposes of this Our Commission, We do by these presents give and grant to you or any one of you full power and authority to call before you or any one of you such persons as you shall judge necessary by whom you may be the better informed on the subject of this Our Commission and of every matter connected therewith. And also to call for have access to and examine all such official Books Documents Papers and Records as may afford the fullest information on the subject, and to enquire of and concerning the premises by all other lawful ways and means whatsoever. And We do hereby give and grant to you or any one of you full power and authority where the same shall appear to be requisite to administer an Oath or Oaths to any person or persons whatsoever to be examined before you or any one of you touching or concerning the premises. And Our further will and pleasure is, that you do and shall with as little delay as possible report to Us in Our Privy Council under your hands and seals respectively your several Proceedings by virtue of this Our Commission as the same shall be respectively completed and perfected. And We will and Command and by these presents ordain that this Our Commission shall continue in full force and virtue and that you Our said Commissioners or any one of you may from time to time proceed in the execution thereof and of every matter and thing therein contained although the same be not continued from time to time by adjournment. And we do hereby require all and every Our Officers and Ministers in our said Islands respectively to be aiding and assisting to you and each of you in the due execution of this Our Commission. And we have made choice of Our trusty and well-beloved CHARLES CLARK Esquire Barrister at Law to be Secretary to this Our Commission and to attend you in the execution thereof whose service and assistance we require you to use from time to time as occasion may require. In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster, the Sixteenth day of May in the ninth year of our Reign.

By Writ of Privy Seal,

EDMUNDS.

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# SECOND REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

GUERNSEY.

We, whose hands and seals are hereunto set, Commissioners, appointed by Your Majesty's Commission, bearing date the 16th day of May, in the ninth year of Your Majesty's reign, for inquiring into the Criminal Laws in force in Your Majesty's Channel Islands and into the constitutions and powers of the Tribunals and Authorities charged with the execution of such laws, humbly certify to Your Majesty that, having completed our inquiry so far as the same related to the Island of Jersey, the result of which we have already laid before Your Majesty in our First Report, we forthwith proceeded, in further obedience to Your Majesty's gracious commands, to the Island of Guernsey.

At an early day after our arrival there, a special meeting of the Royal Court was convened, at which we were invited to attend, when Your Majesty's Commission, having been presented to the Court by the Secretary to the Commission, was read in open court by Your Majesty's Procureur before the Bailiff and Jurats there, in the presence of his Excellency the Lieutenant Governor; and an Acte of Court was passed, in conformity with precedent, for its registration.

We do not think it necessary to detail our proceedings previous to commencing the inquiry in Guernsey, nor to state at length the mode adopted by us in conducting it while there; but for these particulars we consider it sufficient to refer to our First Report, as, in these respects, the course which we followed with regard to both Islands was substantially the same.

Our sittings were conducted in open court, and were constantly attended by the Bailiff, the Jurats of the Royal Court, Your Majesty's Law Officers, the Greffier, the Prevôt, and the practising Advocates of the Court. From all these gentlemen we received valuable aid, as well by the written answers which they had returned to our preliminary questions, as by the assiduity and intelligence with which they assisted at the oral examination, and the readiness which they shewed in supplying us with information on all points connected with the object of the Commission.

In our First Report we stated that we had derived valuable assistance, in our inquiry at Jersey, from suggestions made to us by non-professional persons; but that the evidence was much coloured by the violent conflict of opinions which exists respecting the institutions of that Island. We found a very different state of things at Guernsey. Little was offered to us by the inhabitants, as distinguished from the functionaries, which threw light on the general working of the system. The complaints preferred to us were not many; and of these by far the greater part related to individual grievances, which, assuming the complaints to be just, could not be traced to any peculiarity in the Criminal Law or Tribunals, and into which, therefore, we did not feel ourselves authorized to inquire. We were indeed assured, from more than one quarter, that, but for the dread entertained of the great power and influence possessed by the Jurats, important evidence would have been offered to us. How far this was true we had no means of ascertaining. The assertion was, of course, not disproved by the fact that such evidence was not offered; and we think that the preponderance of the Jurats was shewn to be sufficient to suggest such an apprehension. But we could not see beyond this. On the whole, however, we came to the conclusion that there prevails nothing like a general dislike or suspicion of the present system; and that whatever prejudice or passion is felt on the subject is, without much exception, in favour of the existing institutions.

We shall now proceed to lay before Your Majesty the result of our inquiry into the Criminal Laws in force in the Bailiwick of Guernsey, and the constitution and power of the Tribunals and Authorities charged with the execution of the same, pointing out what have occurred to us as the principal defects, as well in the existing laws as in their administration and the constitution of the Tribunals;

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and humbly suggesting, for the consideration of Your Majesty, certain amendments which appear to us to be required.

The Bailiwick of Guernsey, besides the Island of Guernsey and the adjacent Islets of Herm and Jethou, comprises the more distant Islands of Sark and Alderney. Each of the last two possesses a Criminal Tribunal, of a limited jurisdiction, dependent on the Royal Court at Guernsey, of which the jurisdiction extends throughout the Bailiwick.

The Criminal Law of Guernsey is derived from sources similar to those pointed out in our First Report as the origin of the Criminal Law in Jersey: namely, first, the Customary Law; secondly, the Charters; thirdly, the Orders of the Sovereign in Council; fourthly, the Ordinances of the Local Legislature; fifthly, certain Statutes of the Realm.

The Customary Law, however, seems never to have been precisely the same in the two Islands, the Grand Coustumier de Normandie having never been received as law in Guernsey to the extent to which it prevailed in Jersey. The former Island, probably, was at all times governed by a local custom, differing, as was frequently the case in Normandy, in some particulars, from the general custom of the Duchy. This appears from the answer of the inhabitants of Guernsey, given upon the holding of certain Placita de quo Warranto, before Sir John de Fresingfeld, in the second year of King Edward II. "*Communitas hujus insulæ, allocuta quâ lege utuntur et per quam legem clamant deduci, an, videlicet, per legem Anglorum, vel Normannorum, aut per speciales consuetudines eis per Reges concessas, dicunt quòd nec per legem Anglorum, nec Normannorum, sed per certas consuetudines in hâc insulâ usitatas a tempore quo memoria non existit.*"

In proof of these customs a document was produced to us, regarded as of very high authority in Guernsey, styled the Précepte d'Assise. The opinion of Colonel De Havilland, one of the Jurats of the Royal Court who has made the history of his country his peculiar study, is that, prior to and at the beginning of the reign of Edward the Third, Commissioners were almost periodically sent to the Island, about every three years, and that, from their not knowing the customs and usages of the Island, their decisions were always at fault, and great numbers of complaints were made, which were at last gathered together; and Sir Henry Spigurnell, and, the individuals named in the Précepte d'Assise, were sent, in the 17th year of Edward the Second, to examine into those decisions. They declared the decisions to be of none effect, and that the inhabitants of the Island continued in the enjoyment of their liberties and privileges as fully as before those processes and decisions had taken place. But, as their judgment did not declare what those liberties were, but only that the inhabitants possessed the right of enjoying them, annulling the old proceedings which had been in opposition to them, the Court had them laid down and approved by Sir Henry Spigurnell and his associates, and afterwards by the different Justices in Eyre named in the Précepte d'Assise. We have not been able to satisfy ourselves that this view is correct. The document produced before us bears date the 23rd of September, 1693, and professes to be taken from a copy of the original instrument made the 30th of September, 1489, by Nicholas Effard, the then Lieutenant Bailiff of Guernsey. The instrument, in form, is a certificate by the Bailiffs and Jurats, dated the 30th of September, 1441, setting forth the liberties, usages and ancient customs of Guernsey as found by inquests of the Douzaines of each of the parishes of the Island, witnessing that they are the same with those proved before Sir Robert de Norton and Sir William de la Rue, Justices in Eyre, in the 5th year of Edward the Third, also before Sir Henry Spirgurnell and William Denon, and in like manner before Sir Robert de Scarboro' and his companions, Justices, and more fully set forth in an instrument called the Extente of the said King (that is, Edward the Third). We thought it necessary, from the importance attached to this document by the Royal Court, on our return to England, to search among the records in the custody of the Master of the Rolls for the documents referred to. The record of the pleas before Sir Henry Spigurnell and William Denon, in the 17th year of Edward the Second, still exists among the records of the public Record Office; but we have not been able to trace the connection between those proceedings and the Précepte d'Assise. It appears, from the Placita of 17 Ed. 2., that the King had assigned John de Fresingfeld and certain Justices therein mentioned, to inquire, amongst other

things, into the subtraction of certain rights of the Crown in the Island of Guernsey, and that the Islanders had petitioned the King in Parliament, complaining of the judgment of De Fresingfeld and his companions as erroneous, and also of certain wrongs done them by Otho de Grandison, the Custos of the Island; whereupon the King sent other justices, namely, William de Bourne, Nicholas de Cheney, and John de Carteret, to review the judgment of the former, and to inquire into the wrongs alleged to have been done to the Islanders by the Bailiff and Ministers of Otho. And, upon a suggestion that the Justices last-named had exceeded their authority, the writ of 17 Ed. 2. was directed to Sir Henry Spigurnell, William Denom, and two others, to review the proceedings, and also to inquire into the subtraction of the said rights of the Crown. The proceedings before William de Bourne and his fellows are set out at length, in which the inhabitants of Guernsey claim, for themselves and all their ancestors, islanders of the said Island, certain rights and liberties comprising most of the articles of the so called Constitutions of King John, together with many others. The judgment of De Bourne and his fellows is in the following words. "*Ideo consideratum est per Justiciarios et Juratos secundum legem et consuetudinem patriæ, quòd prædicta Communitas per prædictas libertates et consuetudines de cetero deducatur, et quòd dicta Communitas uti et gaudere debeat predictis consuetudinibus et libertatibus, salvo jure domini Regis.*" This was evidently a decision by the Jurats, in conjunction with the King's Justices, upon their own privileges. The proceedings of 17 Ed. 2., before Sir Henry Spigurnell and William Denon, are in the nature of a writ of error upon this judgment, which is reversed for the errors assigned, principally that the Court had exceeded its jurisdiction. The proceedings before Sir Robert de Scarborough and his companions are also extant among the public records in the custody of the Master of the Rolls. They are of the 5th of Edward the Third, and are pleas in a writ of *quo warranto*, calling in question the rights and liberties before mentioned. The answer of the inhabitants is, "*Quoad prædictas libertates de habendo duodecim Juratos de se ipsis et quod omnia placita, quæcunque fuerint, debeant hic terminari et non alibi adjornari &c., dicunt quod ipsi et omnes antecessores sui a tempore quo non extat memoria, inde seisiti fuerunt sine temporis interruptione, &c. Et quoad omnes alias libertates petunt quod ipsi ad invicem possunt habere colloquium et avisamentum.*" The result of the proceedings is that judgment is given against the Islanders by default, and the liberties are seized into the King's hands.

We also caused search to be made for the document referred to in the Précepte d'Assise, and there called the Extente of the King; but the record is missing. A writ, however, exists in the Patent Rolls of 4 Ed. 3., addressed to John de Roches, the Custos of the Islands of Guernsey, Jersey, Sark and Alderney, Robert de Norton, and William de la Rue, a copy of which was produced before us in evidence, which is considered in Guernsey to be connected with the Précepte d'Assise. It commands the above named Commissioners to inquire "*qui et quot Ministri et Officiarii vadia aut alia feoda a nobis percipiunt in Insulis prædictis et percipere consueverunt, et quæ et cujusmodi vadia et feoda, et à quo tempore, ex quâ causâ, et qualiter et quo modo, ac de aliis articulis præmissa tangentibus.*" There is also another writ in the Patent Rolls, dated the 17th day of February, 5 Ed. 3., directed to the same parties, commanding them to take inquisitions "*super vero valore insularum earundem,*" and, amongst other things, also, "*ad informandum,*" "*per hujusmodi inquisitiones capiendas de omnibus et singulis articulis contentis in quodam rotulo quem vobis mittimus sub pede sigilli nostri, et aliis eosdem articulos contingentibus.*" This writ appears to have been superseded, and a subsequent writ issued, dated the 18th of June in the same year, directed to the above mentioned Robert de Norton and Peter de Hoo, reciting the former writ, and assigning them "*ad supervidendum statum Insularum quæ aliàs extensæ non fuerunt,*" "*et ad informandum vos, per inquisitiones per sacramentum &c. capiendas &c., de præmissis omnibus et singulis, et ea tangentibus, in formâ prædictâ.*" The Extente was probably an inquisition taken in obedience to these writs. A copy of the Extente of the Island of Jersey taken before Robert de Norton and William de la Rue, in 5 Ed. 3., shews that the inquiry in that case was for purposes purely fiscal. But the *articuli in rotulo* may have related to the privileges claimed by the inhabitants, and, if so, would partly explain the statement contained in the Précepte d'Assise.

The opinion which we have formed, from a review of all the documents, is that

GUERNSEY.

the instrument called the Précepte d'Assise was framed by the Royal Court, and is valuable as evidence of what the inhabitants, at an early time, claimed to be their customs and privileges; and that, so far as it relates to the constitution and jurisdiction of the Royal Court, it is of great importance in the present inquiry; but, so far as we have been able to discover, it derives no force from the approval of the Justices in Eyre, in the manner stated in the instrument. The portion of it relating to the Royal Court evidently owes its origin to the Constitutions of King John, referred to in our First Report: but an attentive comparison of the documents shews that the liberties granted by the Constitutions are greatly expanded in the construction put on them by the Royal Court. The Extente and Précepte d'Assise are, however, recognised in the Approbation des Loix (to be presently mentioned), and there directed to be kept and inviolably observed, "*tant pour l'Election, Estat et direction des Justiciers et autres Officiers de sa Majesté, que aussi pour les Droits, Rentes, Revenus, Services, Hommages et suittes de Court, apartenants et dûes à sa Majesté en cette dite Isle de Guernezey.*" And the Précepte d'Assise, whatever its origin, has always been regarded as authority in questions touching the jurisdiction of the Royal Court and the limits of the power of the Bailiff and the Governor, as representing the Crown.

The principal authority for the law, both civil and criminal, in Guernsey, is the work just mentioned, entitled, "*Approbation des Loix, Coustume, et Usages de l'Isle de Guernezey, differentes du Coustumier de Normandie d'ancienneté observés en ladite Isle.*" It professes, in the introductory chapter, to be a digest and arrangement of these laws, customs and usages, made the 22nd of May, in the 24th of Elizabeth, by Sir Thomas Leighton, Knight, the then Governor of the Island, Thomas Wigmore the Bailiff, the Jurats of the Royal Court, and the acting Procureur of Her Majesty, in obedience to two separate Orders in Council made, the one at Richmond, on the 9th October, 1580, the other at Greenwich, on the 30th July, 1581. It was ratified and approved of by Her Majesty in Council on the 27th of October, 1583, in the 25th year of Her reign.

This account, however, conveys a very inaccurate idea of the work, which is nothing more than a series of remarks upon each chapter of Terrien's "*Commentaires dv Droit civil tant pvblic qve privé, obserué au pays et Duché de Normandie,*" stating wherein the custom of Guernsey differs from, and wherein it accords with, the law laid down in the particular chapter of Terrien, often simply using the expression "*nous usons de ce Chapitre.*" An examination of the two Orders in Council of 1580 and 1581 shews that something very different was contemplated. The first, after reciting a complaint of the want of due administration of justice, "through the libertie, the Bailiffe and Juratts do take unto themselves to directe theire judgment by presidents, wherein there is neyther certaintie nor rule of justice," "forsaking the customarye of Normandie whereunto they should holde themselves in all points not restrained or supplied by the Booke of Preceptes" (probably the Précepte d'Assise already noticed) "and Booke of Extente," orders them, in all matters not restrained by those instruments, or by any order in Council, to "follow the customarie of Normandie, and according to the customs thereof, minister justice within the said Isle." And, after permission given to retain their forms of proceeding as theretofore had been usual, where they differ from the forms prescribed by the customary of Normandie, "unless in any theire Courts of Chief Pleas they shall by assent of the States of the Isle agree uppon anie orders tending to the abridgement of length of sutes," it is ordered that "the Bailiff and Jurats shall joyne unto them twelve other persons of the most ancient and best experienced in the Isle, to be named by the Governor, and shall altogether conferre the sayd customs" which differ from the customary, "with the customary of Normandie, corrected and amended, in the reign of King Henry the 2 of Fraunce" (that is the Reformed Custom of Normandy), "in matters touching the abridgment of length of sutes; and suche as they shall finde different from the sayd customary shall put in writing, and send the same to the Lords of Her Ma$^{ties.}$ Privie Counsell before Easter then next, to receive their order therein." The customs referred to, as differing from the custom of Normandy, regard the right of succession, partage, dower, retraicts and other like matters, but appear not to affect the Criminal Law or its administration. This Order was not complied with. The Order in Council of 1581, after reciting that "the Bailliffe and Jurates were commanded by a former order from their Lordships, to sett down in writing the lawes and customes used and observed in that Isle, and thereof

make a certificate unto their Lordships, which hath not yet been done," directs them, with the assistance of the Captain, or, in his absence, his Lieutenant, and Her Majesty's Procurer, jointly, to make "such a booke of the sayd lawes and customes, so farre forthe as they all can agree amonge themselves touching the same; and if they shall disagree in anie pointe, that the Bailliffe and Jurates for their parts shall set downe in writing and send unto their Lordships their opinions touching that pointe or matter which is doubted of, and the said Captain or his Lieutenant and Her Majesty's Procurer to doe the lyke, to be thereupon decided and determined on by their sayd Lordships, with the advise of the Judges and others of Her Majesty's learned Counsell, what is to be holden and observed therein." The Approbation des Loix was the book of the laws and customs made in obedience to this order. It received the approbation of Her Majesty in Council, in the following terms, according to the translation appended to the Approbation. "*Messeigneurs du Conseil Privé de la Royne nostre Souveraine Dame, après avoir veu & entendu & consideré le contenu de ce Livre, soubsigné par le Sieur Thomas Leighton, Capitaine, et Gouverneur de l'Isle de Guernezey, les Baillif & Jurez de ladite Isle, ont ratifié & approuvé, ratifient & approuvent lex Loix et Coustumes y contenuës, pour estre observée & pratiquée en ladite Isle de Guernezey, sauve toûjours à sa Majesté & à ses hoirs & successeurs, pouvoir d'y ajoûter, diminuer & corriger à son bon plaisir, reservant semblablement tous autres Priviledges, profits, droits & préeminences apartenant à sadite Majesté, ses hoirs & successeurs, sans toutes fois faire aucun préjudice aux anciens & legitimes Priviledges, octroyée par cy-devant aux Habitants de ladite Isle.*"

This, in terms, is merely a ratification and approval of the laws and customs contained in the book. The construction which has been uniformly put by the Royal Court on this Order in Council is that it has a legislative force to make the Commentaries of Terrien, coupled with the book of the Governor, Bailiff and Jurats, a code of law for the Island. The effect of this construction, whether correct or not, has in practice been to compel the Bailiff and Jurats to continue to exercise the liberty, condemned in the Order of Council of 1581, of directing their judgment by precedents without certainty or rule of justice.

We have expressed our opinion of Terrien's Commentaries in our First Report. If his work was, in other respects, unobjectionable, its form alone would unfit it for the purpose to which it has been applied. But the text, not being confined to the Customary of Normandy, to which the Bailiffe and Juratts were directed to hold themselves, but extending to Ordonnances of the Court of Exchequer at Rouen and the Parliament of Normandy, and recent Edicts of French Kings, contains laws never contemplated by the Orders in Council; and the notes, abounding with superfluous discussions in the style common at the time in which Terrien lived, with decisions of the French Courts upon laws never prevalent in Guernsey, and with statements of opinions conflicting one with another, form a worse than useless groundwork for a system of definite law. The arrangement of the treatise appears also to us to be ill judged and most inconvenient for use. In some cases, too, the Approbation has entirely misrepresented the meaning of Terrien. A curious instance of this is given by Mr. Le Marchant in his "*Remarques et Animadversions sur l'Approbation des Loix,*" of which we shall speak more fully hereafter. The first Book of Terrien is entitled "*De la Jvstice et dv droit des Normans.*" It consists of a dissertation on the various meanings of the words, right and justice, the "Droict" of the first chapter of the Grand Coustumier, and the "Justice" of the third chapter of the same treatise in its abstract sense only. But the framers of the Approbation, supposing "*La Justice*" to mean the legal functionaries, that being the popular name under which the tribunal of the Bailiff and Jurats passes in Guernsey, and "*Droict*" to mean the revenues of the Crown, which are sometimes so called, make this remark. "*Au lieu du premier livre qui traite de la Justice et du droit des Normands nous avons accoustumé d'user suivant le livre apellé l'Etente du Roy et Précepte de l'Assise,*" which treat, as we have before pointed out, of legal functionaries and revenues of the Crown, but contain nothing relating to Justice or Droict in the sense attached to those words in the first chapter of Terrien.

The work so executed was not satisfactory to the people of Guernsey. In the answers of the Lords of the Privy Council, in 1605, to a request on the behalf of the inhabitants that "the Booke of their laws of that Isle made, anno 1583, but remaining imperfect and supposed to be in many poyntes erronious, may be re-examined, reformed and made perfect," it is answered "that the Bailiffe and

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Juratts of Guernzey, calling to them such assistance as the generale Estates of the whole Isle shall holde to be most sufficient, both for their understanding and integritie, shall sett downe a faire Booke agreeablie to the Local Customes which that Isle hath ever observed in the course of Justice amonge themselves, which being orderly made up, they shall present the same to the Lordes of the Privy Counsell, and from them receave either correction or confirmation, as in their wisedomes after conference with the compilors thereof, shall be thought best for the Government." This "faire booke" was never made, whether from inability to agree amongst themselves as to what was the law, or from a desire to continue that state of uncertainty which leaves so wide a scope for the discretion of the Court, and is so favourable to the extension of its power.

In the 5th of James the First, however, a commission issued under the Great Seal, directed to Sir Robert Gardiner, Knight, and James Hussy, Doctors of the Civil Law, reciting that the Crown was informed that there were "divers matters concerning the state and government of those Isles" (Jersey and Guernsey), "that do require reformation and amendment, by reason of many defects and ambiguities, which either through the length and alteration of times," [or] "by the misinterpretation and wrongful use and practice of persons, had grown and risen in the laws, customs and forms of government in those Isles," and authorizing the Commissioners, among other things, "to enquire and to take knowledge of all such defects, ambiguities, and imperfections, as are to be found in the laws, customs, and government of the said Isles, and have grown by the means before mentioned; and to consider of them, and how they may be reformed and amended." In obedience to the Royal commands, the Commissioners heard the complaints, as well as of the community at large as of the several parishes of Guernsey, and made such orders in the matters as seemed to them necessary. These are called *Réglemens des Commissaires Royaux, Envoyés par S. M. Le Roi Jaques* I. *L'Année*, 1607. They have always been received as authority in the Island; and we were frequently referred to them during the progress of the inquiry. The second article of the general complaint of the people against his Majesty's Justices of the Isle of Guernsey, the Bailiff and Jurats, especially, is "that the book of laws is confused, containing some contradictions, and more uncertainties; so that the judges have very few certain rules and directions for the administration of justice, whereof proceedeth the diversity of sentences and judgments, to the great hurt of the people; and yet in the laws certain, the justices often times dispense themselves from the due observation thereof." To which the answer of the Commissioners is: "Albeit that we cannot find by any proof hitherto made before us, that the Justices have taken or given unto themselves any such dispensation as is mentioned; yet it is acknowledged that their book of laws is, in many points, uncertain, defective, and imperfect, and therefore the Bailiff, and Justices, with one consent, in the name of the rest of the inhabitants, and for that special care which they seem to have of the common good of the Island, have requested in like manner as they of Jersey have done before them, that we would be pleased to join with them in a petition to the King's Majesty, for the appointing of some chosen Commissioners, to whom authority may be given to set down such points as in their old laws they find worthy of a reformation, or else of a new law to be established: which being done with their three *Etats*, they will cause the same to be brought into England, there to be considered of by the best learned, as well in the Common Law as the Civil Law, and then present the same to the Lords of His Majesty's most honourable Privy Council, that so likewise they giving their approbation to the same, by His Majesty's royal assent, under the great seal, it may be confirmed."

We have not been able to discover that this recommendation was ever carried into effect: and Terrien, coupled with the Approbation, has continued to be treated as the exposition of the laws and customs of the Island of Guernsey to the present day. These constitute much the greater part of what is commonly termed "the written law."

The Twelfth Book of Terrien treats, "*Des Crimes et Procez Criminels.*" The existing Criminal Law of Guernsey mainly consists of such parts of it as received the confirmation of Queen Elizabeth in the manner above stated.

Besides the written law found in Terrien and the Approbation, which derives its authority from the legislative act of the Crown, records of the proceedings of the Court are preserved at the office of the Greffe, which have the force of precedents in doubtful cases. No digest however of the decisions, nor index

to the cases, exists; but the Advocates keep collections of cases which are cited as authorities for the guidance of the Court.

The criminal procedure in Terrien being very similar to that in force in France before the first Revolution, the older French Criminal Jurists, more particularly Pothier, Jousse and De la Combe, come to be considered as authority.

The modern French and English text writers are also cited in illustration of the principles of the Criminal Law.

A work frequently referred to, in the discussion of questions arising on Terrien and the Approbation des Loix, is "*Remarques et Animadversions sur l'Approbation des Lois et Coustumier de Normandie usitées es Jurisdictions de Guernezé, et particulierement en la Cour Royale de la ditte Isle. Par Thomas le Marchant.*" The author was a Presbyterian minister, who lived in the middle of the 17th century, and had devoted a great portion of his time to the study of the laws and customs of his country. His treatise has been recently published by order of the Royal Court: and its value is best expressed by the following extract from the introductory notice of the work by the members of the Court who had been intrusted with its publication. "*En mettant sous les yeux du public les Remarques et Animadversions du Rév. Thomas le Marchant, le public est prévenu que ce n'est pas le dessein de la Cour de confirmer ou approuver toutes les opinions de cet écrivain; son unique objet étant de fournir aux habitans l'occasion de s'instruire sur l'origine de nos coûtumes locales et sur les changements qu'elles ont éprouvé à diverses époques.*"

We do not find that any Charter granted by the Crown has materially contributed to establish or modify either the Criminal Law or the Criminal Tribunals of Guernsey, with the exception of the instrument called the Constitutions of King John, which we have found it necessary already to describe in the course of our remarks on the Customary Law, from its provisions having been at different times incorporated with customary privileges, and indeed spoken of as such.

All Orders of Your Majesty in Council have the force of law in Guernsey, as in Jersey, proprio vigore; whether they originate in the Privy Council, or are in confirmation of enactments of the local legislature, or direct the application of some Act of Parliament not originally intended to take effect in the Island. The mode of promulgation is by reading the Order in full Court, after which it is registered at the Greffe. It is considered to take effect from the date of its registration. But, except to that extent, an Order in Council derives no effect from registration; and the Court has no discretion with respect to its registration, but is bound, on its reception, to register it, without in any way suspending its operation.

The Royal Court claim and have exercised, from the beginning of the 15th century, the right of acting as a legislative body at certain Courts, called Chefs Plaids. The Royal Court consists of the Bailiff and Twelve Jurats; the manner of the appointment and election of these functionaries will appear hereafter. The Chefs Plaids are held three times in the year: on the first Monday after the 15th January; the first Monday after Easter week; and the first Monday after the 29th of September. The Bailiff and at least seven Jurats, with the Procureur and Contrôle de la Reine, constitute these Courts. The Governor, also, has the right to be present; the Crown vassals attend to do homage; and one of the constables of each parish is also bound to appear, by virtue of an Ordinance of the Chefs Plaids made in the early part of the present century. The law is, in fact, always proposed by the Law Officers of the Crown. The enacting power rests with the Bailiff and Jurats alone, after hearing the conclusions of the Law Officers; if the votes be equally balanced, the Bailiff has a casting vote, besides his original vote. But the constables have the right of making observations in favour or disapproval of any proposition submitted to the Court. Private individuals also, whose interests are likely to be affected by the proposed law, may be heard in person or by counsel against it. The Governor possesses no veto; but, in the event of any provision affecting his rights or duties, it is usual to submit it to him for his approval prior to its being proposed; and, although his consent is not necessary to its enactment, it would probably, in the absence of such consent, be disallowed by the Privy Council on his complaint. The laws so passed are called Ordonnances. They take effect by the mere power of the Royal Court without the

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intervention or approbation of the Lords of Your Majesty's Privy Council, or the assent of Your Majesty's Governor in the Island, or the concurrence of the general body of the people.

The origin of a power so extensive is not clearly ascertained, nor the limits within which it can be lawfully exercised accurately defined. We were referred to an article contained in an Order in Council, of the date of 1568, as the earliest recognition of this right by the Crown. It is in the following terms. "Item, that all Graunts and Confirmacions of Priviledges from the Queen's Majestie, and her Progenitors shalbe alwayes inviolably observed, maynteyned and kepte in force with the credit of the Bailyeff and Juratts, to be obeyed in all their ordinancs made and to be made for the good Governmente, Suretie, and Quietnes of the said Isle. And that noe officer or Mynister of Justice be at anie tyme hereafter resistid, ympeched, or ymprysoned for executinge the Sentences, Ordinaunces and Constitucions aforesaid, but maynteyned and assisted according to the Lawes, Usages, and auncyente Customes of the Isle." We were informed that this provision grew out of the imprisonment of a constable by the then Governor for having executed an Ordonnance of the Royal Court: and it was argued that it recognised the right of the Royal Court to make Ordonnances generally for the good government, surety and quietness of the Island. We have not been able to obtain the whole of the proceedings in the case so as to form an accurate opinion on the effect of the particular order; but it was clearly proved to us, from the Approbation des Loix, that Ordonnances were made by the Court at Chefs Plaids at the time of that work and long before, with respect to the repair of roads, the assize of bread, the regulation of public amusements, the right of sporting, and other subjects of local police.

Similar powers appear to have been exercised by the Justices itinerant in their Assizes. We have inspected regulations, called their "*Ordinationes et præcepta*," dated 17 Edw. 2., which bear a strong resemblance to the Ordonnances of the Royal Court. These, however, might derive their authority from the Royal Commission directed to the Justices.

The Jurats, in an answer transmitted to the Privy Council on the 10th of January, 1737, thus define the powers of the Royal Court. "We never pretended to be invested with the power and authority of making laws, and it is what neither we nor our predecessors before us, ever assumed; but we beg to acquaint your Lordships, that this Court has always, as well by the nature of our constitution, as by virtue of sundry charters from the Crown, and other express orders in Council, deemed itself authorised and empowered to make regulations, and set down such rules and methods as were necessary for enforcing and putting in due execution the laws of the Island." The practice, however, has greatly exceeded these limits. The received opinion, at present, as to the limit of the legislative power of the Court in Chefs Plaids, is that it is incapable of passing and enforcing Ordonnances which militate against any Order in Council or any other law passed by an authority superior to that of the Royal Court, but that its power in other respects is unrestrained. The application of the rule was illustrated by the inability of the Court in Chefs Plaids to alter the law with respect to the admissibility of witnesses without the intervention of the Privy Council, the objection to their admissibility existing in a chapter of Terrien, confirmed by the Approbation des Loix. This rule, if strictly observed, would still leave a wide scope for legislation. But much of Terrien, though sanctioned by the Approbation, has, as we shall have occasion to remark, ceased to be law; and other provisions have been substituted without any other authority for the change than the practice of the Court. The principal Ordonnances, at present in force, regulate law proceedings, the highways, the harbours, the right of gathering vraic, or sea-weed for manure, the importation and exportation of provisions, and the mode of taxation. The duties and discipline of the militia are also regulated by Ordonnances of the Royal Court. Obedience is enforced by fine and imprisonment; and no appeal lies from any sentence of the Court in execution of their provisions.

It has already been stated that all laws, exceeding the limit within which the Ordinances of the Royal Court are confined, require the confirmation of your Majesty in Council. This extends to laws passed by the States of the Island, as distinguished from Ordinances of the Royal Court in Chefs Plaids.

The legislative functions of this body are very limited. The initiative belongs

to the Royal Court, where the projected law must be first discussed and adopted before it can be submitted to the States. If it is passed by the States, it is transmitted to the Privy Council for confirmation: if it is rejected, the measure falls to the ground.

The history of the States is involved in much obscurity. It is probable that they originally were constituted on the model of the Trois Etats in Normandy; the Bailiff and Jurats corresponding with the Noblesse; the Rectors of the parishes answering to the Clergy; and the Douzaines, an elected body in each parish, representing the Tiers Etat. They possessed certain legislative functions, said to be distinct from those of the Royal Court in Chef Plaids, being convened for the discussion of certain matters designated as "*affaires politiques*," chiefly referable to the election of the Jurats and local taxation. The practice, however, of assembling them for legislative purposes had fallen into disuse at the time of the Approbation des Loix. The passage in the Approbation to the seventh chapter of the second book of Terrien, which treats "Des gens des trois états," is as follows. "*Nous n'avons accoustumé en cette Isle d'avoir Gens de trois Estats; mais toutes les affaires politiques se font, par l' advis du Gouverneur, Baillif et Jurez de la Cour Royalle: après avoir par les Connestables, connu le vouloir de la Généralité du Peuple.*" Mr. Le Marchant, in his Remarques et Animadversions sur l'Approbation des Loix, refers this to the usurpation of the Royal Court. His words are, "Ces autheurs de l'Approbation ayant rejetté les deux autres Estats" (that is, les Ministres et le Peuple), "se sont acquis une dictature perpétuelle, par laquelle ils ménagent à leur poste les privilèges, disposent des deniers publics, et imposent taxes sur les habitants quand bon leur semble; et quant au vouloir ou consentement du peuple par la bouche des connestables, ce n'est plus qu'un ombre sans corps de la puissance ancienne des dits estats; la Justice" (that is, La Cour Royale) "emportant à présent les affaires de haute lucte, les connestables n'osants ou ne gagnants rien de tergiverser, tellement que le plus souvent ils acquiescent à des choses dont la généralité du peuple n'a pas seulement ouy parler." In the year 1605, after the date of the Approbation but before the time at which Mr. Le Marchant wrote, the States were revived, on the petition of the inhabitants, by an order in Council in the following terms. "Furthermore, where it is desired that the ancient use and authoritie of assembling the three States of the Island, for ordering the principale affaires thereof may be re-established; this request seemeth reasonable and according to the auncient custome of the said Isle, thought meete to be graunted." The three Estates of the Island were, thereupon, reestablished according to ancient use; but, on the issuing of the Royal Commission of inquiry, before referred to, in the 5th of James the First, amongst the petitions from the parish of St. Peter Port concerning the general good of the Isle, it is prayed that "an order be made for the formal composing of the General Estates of the Isle; what number of persons, and of what calling and quality; the manner of their election and admission into that company, and what shall be the authority of the said company in general." Also that "hereafter the number which shall be appointed for the third Estate or Commons, be chosen indifferently upon all the Isle, of the most sufficient, without respect of their dwelling, in the same manner as the Jurats shall be chosen." The answer of the Commissioners is, that, "upon conference had with the Bailiff and Justices, they find no such difficulty in the ordering and composing of all the Estates of this Isle; but that the Bailiff and Jurats, according to their ancient customs, may order the same as shall be needful."

The present constitution of the States of Guernsey is settled by an Order in Council of the 13th of December, 1844, confirming an Acte of the States for that purpose. In order to make its provisions intelligible, it will be necessary to state the mode in which the parochial Douzaines are constituted.

There are eight parishes only in Guernsey for ecclesiastical purposes, each of the eight having a rector appointed by the Crown; but for municipal purposes there are ten. Each of these has its Douzaine, consisting of certain members, called Douzeniers, who, together with the Constables, form the council of the parish. They provide for the relief of the native poor; attend to the repair of the roads; and make the parochial rates. The practice is to rate no one in the country parishes who does not possess seven quarters of wheat rent, equivalent to a capital of 140*l.*; and no one in the town parish who does not possess a capital of at least ten quarters, equivalent to 200*l.* The rate-payers in each parish elect

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the Douzeniers and the Constables. There are two Constables in each parish. Their duties are not confined to acting as Peace Officers. They also preside at the meetings of the Douzaine in their respective parishes, are the treasurers of the public moneys, and, prior to the law of 1844, were the representatives of the Douzaine in the States, when acting as what were termed States of Délibération. They are compelled to serve for one year; but, unless successors be elected, they continue to serve for three years; at the end of that period, there must be a new election; but the same persons, if they consent (not otherwise), may be reelected. The Douzeniers are elected for life from those who have served the office of Constable; they must also be assessed in the parish books at not less than ten quarters, in the country parishes, and not less than thirty quarters in the parish of St. Peter Port. They are, however, entitled to their discharge after attaining the age of sixty years: they also vacate their office if they cease to reside in their respective parishes, and are liable to be removed for sufficient cause by decree of the Royal Court. To have served the office of Constable and Douzenier is a common introduction to the office of Jurat. The number of Douzeniers in each parish, as the name imports, was originally twelve. By ancient usage, the parish of St. Peter Port had twenty; and the parish of the Vale sixteen, that is, twelve for one district called the Clos du Val and four for the remaining district, called L'Epine. The law of 1844, however, has greatly increased the Douzeniers for St. Peter Port, by creating in that parish four Cantonal Douzaines of twelve members each, in addition to the parochial Douzaine of twenty, making, in the whole, sixty eight Douzeniers for the town parish and its cantons. The augmentation of the number of their Douzeniers had been long claimed by the inhabitants of the town parish. In their petition to the Commissioners in the reign of James the First, they state that "time out of mind, this said town and parish of St. Peter-Port did stand in all elections of public persons and other affairs that do concern the state of the Isle, for the third, even as the said parish sustained the third part of all public charges in subsidies and taxations." They complain that "the Bailiffs and Jurats have lately in the proceeding to public elections, deprived the same parish of her ancient preferment and advantage, reducing her to the same order and degree that the lesser parishes of the Isle holdeth." The Commissioners, in their answer, state that "there was never any such privileges or pre-eminence allowed to the said parish," and proceed to lay down certain laws for the election of officers, placing the right in the Bailiff and Jurats, with the Constables and Douzeniers of every parish.

The Bailiff, the Jurats, the Rectors, the Procureur, the Constables and Douzeniers of the Town Parish and its Cantons, and the Constables and Douzeniers of the Country Parishes, now constitute the body of the States when acting in the character of Etats d'Election. Thus the States of Election consist of 222 members; the Bailiff, the eight Rectors, and the Procureur, appointed by the Crown; the twelve Jurats, elected for life by the States; the 180 Douzeniers, elected for life by the rate payers of their respective Parishes and Cantons, from a select body, namely those who have served the office of Constable; and, lastly, the 20 Constables, also elected by the rate payers for three years. When the States are assembled for the purpose of legislation, under the name of Les Etats de Délibération, the Bailiff, the Jurats, the Rectors, and the Procureur, alone possess, as individuals, a vote, the Parochial and Cantonal Douzaines being represented by Deputies, in the following manner: the Parochial Douzaine of the town parish sends two Deputies to the States of Délibération, and each of its Cantonal Douzaines one, in all six Deputies representing the Douzaines of St. Peter Port. Each of the country Douzaines sends one Deputy, in all making 9 Deputies representing the Country Douzaines. The whole number amounts thus to 37.

The Constables thus form the only popular element in the States, and form a part of them only when they are acting as States of Election. The States of Election elect the 12 Jurats, and an officer called the Prévôt, whose functions nearly resemble those of an English sheriff. Each member of the States of Election has a single vote. The legislative functions of the States are confined to the States of Délibération. They are convoked by the Bailiff, who is the President of the Assembly, after conference with the Lieutenant Governor. Their absolute power of taxation is limited to levying general taxes, not exceeding, in the course of each year, the amount of a penny per quarter. If they impose a heavier tax, this must be confirmed, first by the States of Election and then by

the Crown in Council, to make it legal. Their power of passing laws is limited to the discussion of projects of law sent up to them from the Court of Chefs Plaids, which consist of laws considered to be beyond the power of the Chefs Plaids. If such laws are confirmed by the States of Délibération, they still require the assent of the Crown in Privy Council.

No authorized collection of the acts of the local Legislature exists in print.

Acts of the Imperial Legislature in which the Island is named, either specifically or by necessary intendment, also have the force of law in Guernsey. The course is for the Clerk of the Council to transmit them to the Governor and the Royal Court with an order to register them, expressing that the registration is not essential to their validity, but is directed in order that the inhabitants may take notice of them, and govern themselves accordingly. This mode of proceeding was adopted in consequence of the Court suspending the registration of an Act of Parliament in 1806, and has been followed ever since.

Questions of practical difficulty often occur with respect to Acts of Parliament which have been registered. First, the provisions of an Act in which the Island is expressly named are often inapplicable to the state of things in Guernsey and incapable of taking effect there. Secondly, Acts are transmitted in which the Island is not named, either expressly or by intendment, with the ordinary direction to register. In the first case, the Act would seem to be merely inoperative. In the second, it is questionable whether it has the force of law, seeing that it derives no validity in the Island from the act of registration nor from the terms of its enactment. Acts of Parliament are also often transmitted for registration long after they are passed, when it becomes questionable whether they take effect from the time of their enactment in England or of their promulgation in Guernsey. We think that these points deserve the attention of Your Majesty's Privy Council and of the Imperial Legislature.

We now proceed to give an account of the Criminal Law, as existing in the Island of Guernsey and its dependencies. In so doing, we shall necessarily be led to repeat many of the remarks made, in our First Report, with respect to the Criminal Law of Jersey. The same causes have produced similar results in both Islands. The ancient law, as found in Terrien, is most defective, both in the definition and classification of crimes and in the annexation of specific punishments to particular offences. There have been no legislative enactments since the Approbation des Loix to supply these deficiencies. The necessary consequence is that cases have continually arisen, not provided for by the written law, with which the Court has been compelled to deal by an exercise of its general criminal jurisdiction, and to punish according to what, under the circumstances, appeared to be expedient. According to the Précepte d'Assise, the Jurats possess "la cognaissance, jurisdiction, précognition et jugemens en la compagnie du dit Bailliff de toutes matières de causes ciuilles et criminelles eschéantes en la ditte Isle toutes fois et quantes." This is considered to confer on the Royal Court the right to try and punish every offence against society; whatever, in point of fact, is malum in se. Consequently, in all cases where the law had not affixed a specific punishment to the act, the Court has been forced to award punishment in its discretion on every case as it arose, or to exercise a quasi legislative power, by creating a precedent to govern future cases on a recurrence of the offence. The former course has mostly prevailed in Guernsey. In all cases not provided for by the written law, the Court assumes to act arbitrarily, with regard both to the mode of trial and to the punishment it inflicts. But, in some even of the few instances in which particular punishments are mentioned in Terrien in connection with particular offences, a different punishment is now inflicted. The Procureur endeavoured to account for this on the ground that by the general law, as laid down in Terrien, the punishment of offences is left in the discretion of the judge. In support of this, he referred to the following passage from Lib. xii., chap. xxxix.:— "Les peines des crimes sont toutes arbitraires en ce Royaume" (that is the kingdom of France), "si non d' autant qu'il y en a de statuées, indites & imposées par les edicts et ordonnances Royaux." The effect of this, applied to Guernsey, would be that, where no specific punishment can be found in the written law applicable to the crime, the Court may exercise its discretion in inflicting the

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punishment. The passage, however, affords one instance, among many, of the absurdity which results from regarding Terrien's work as the written law of the Island. The punishment of crime is regulated by the edicts of French monarchs in force in France at the time Terrien wrote; where these are wanting, it rests in the discretion of the Jurats. This, in itself, would be a great defect; but, according to the construction adopted by the Court, even where a specific punishment is mentioned in Terrien, the Jurats are not bound to adhere to it, or to abstain from another. In its legislative character, acting in Chefs Plaids, it was admitted, the Court has no authority to change the written law. But we were told that its judicial power is superior to its legislative power: that the Court, sitting in Chefs Plaids, has no right to bind the Court sitting in judgment on an offender to a specific punishment, and that the judge, notwithstanding Terrien, is not bound specifically to any one punishment, but may inflict another, provided he does not go beyond that named in Terrien. The practice of the Court evidently concurs with this view; but it is wholly inconsistent with the recognition of Terrien as the written law of the Island.

The great divisions of indictable offences in Guernsey are determined by the different modes of trial applicable. These we shall describe more fully when we come to explain the constitution and powers of the Court. At present, it will be sufficient to state that there are two modes of trial; first, that *A l'ordinaire;* secondly, that *Au grand criminel.*

Offences of the class first mentioned may be punished by fine, imprisonment, flogging, the pillory, or banishment for any period less than seven years. These are again divided into two classes: first, those offences which are punishable by fine and imprisonment only; and for these the Act of accusation uses the words "à se voir adjuger à telle peine, punition ou amende que la Cour trouvera condigne:" secondly, those which may be liable to all of the punishments mentioned; and for these the Act of accusation uses the words "à se voir adjuger à telle peine, punition ou châtiment corporel que la Cour trouvera condigne." Within these limits, the degree of punishment rests wholly in the discretion of the Court.

Offences tried "*Au grand criminel*" must be laid to have been committed "*félonieusement,*" and subject the offender to "*les peines et punitions imposées par les loix.*" Those were formerly loss of life or limb, or banishment from the Bailiwick for not less than seven years, which constitutes a civil death. To these punishments forfeiture, as well of lands as of goods and chattels, was incident. The modern practice has added transportation, but has disused punishment by loss of limb. It also retains the confiscation of the felon's property, real and personal, as incidental to the punishment. In what way this change has been effected is not known. The Court, however, has gone much farther, by ruling that, in a proceeding "*Au grand criminel,*" it is not bound to inflict any of the punishments which we have mentioned as appropriated to this proceeding, but is at liberty to pass a minor sentence without confiscation. This is inconsistent both with the law and the form of the proceedings, and incapable of being referred to any principle. The law is first altered without legal authority, and the law so altered is not adhered to. Offences prosecuted "*Au grand criminel*" are, however, still called felonies, as distinguished from those prosecuted "*A l'ordinaire.*" And to this extent the existing law affords a definition of felony, that a crime which may subject the offender to a punishment to which confiscation is incident is a felony. In endeavouring to ascertain what crimes must be so punished, we found it impossible to arrive at any rule determining the particular acts which are legally felonious. The only conclusion we have been able to draw from the evidence is that it rests with the Court to direct what crimes shall be tried "*Au grand criminel,*" and that all so tried are felonies, because the act must be laid to have been done "*félonieusement*" in that mode of proceeding. The highest crimes, as Murder, which is punished by death, necessarily fall within this class; but the limit separating this class from the class below seems to us not only unsusceptible of definition, but liable to continual change. We were told that there could be no felony which was not an act of violence. This coincides with the definition in Terrien. "Est cy interpreté vn outrage commis par felonnie, qui est commis par force & violence, & de courage meu, en intention & volonté de mal-faire: A la difference des cas qui se commettent *extra animum,* et sans y penser."—(L. xii. c. 28.) Upon this principle we were told that simple theft cannot be properly laid "*félonieusement.*" The modern practice

certainly is not so to charge it. But, according to Terrien, "*Larcin notable et qualifié*," and "*larcin*" after a previous conviction for the same offence, are felonious (L. xii. c. 20.). This is no longer the law in Guernsey. At least a difference of opinion appeared to exist, whether a person brought up on a number of charges of "*vol*" together might be indicted "*félonieusement*:" but it was admitted that, where the theft is accompanied with "*effraction*" (breaking into a house), or with violence, the facts would be properly set out in the "*mise en accusation*," and the offence laid to have been committed "*félonieusement*." With regard to forgery, there are modern cases in which it has been laid both ways; and, notwithstanding the absence of violence, it is generally laid *félonieusement*. Again, maliciously stabbing or cutting and wounding, notwithstanding the violence, is prosecuted either "*A l'ordinaire*" or "*Au grand criminel*," according to the view the Court takes of the circumstances of the act. In a recent case, the offender, an Advocate of the Court, was tried "*A l'ordinaire*," although the second head of the indictment charged that, after the defendant had given the wounds, he pursued the prosecutor with the intention of killing him. The same observations will apply to other crimes. In examining the returns of persons prosecuted "*Au grand criminel*" and "*Au criminel ordinaire*," for the ten years preceding 1846, we found instances of burglary, house-breaking, cutting and wounding, sheep stealing and larceny by servants, tried sometimes "*Au grand criminel*," and sometimes "*A l'ordinaire*;" and one instance of a person tried "*Au grand criminel*" for what appeared to be several simple thefts, more than one offence being charged in the indictment.

We do not think it necessary to detail more minutely the several heads of crime, and the punishments incident to them. It is sufficient to state that we found scarcely a single instance in which the law could be traced to a higher source than the discretion of the Court, or in which that discretion was itself secured from continual variation in practice. We except, of course, the cases in which Ordinances have been passed by the Legislature of the Island. We have already stated the nature of the subjects of these Ordinances; and we need here only add that manifestly the Criminal Law of the Island, in the higher and more general sense of the term, cannot be considered as resting upon this foundation to any serious extent.

It is clear that the continuance of such a system is inconsistent with the administration of justice on any fixed principle, and that it tends to subject the Court to the imputation of partiality or caprice. The community may fairly demand a definite state of law; and we think the Judges themselves entitled to be relieved from the exercise of a discretion which cannot fail to be embarrassing to themselves and unsatisfactory to the community. We recommend the adoption of a course, with regard to the criminal law of Guernsey, similar to that suggested in our First Report with regard to the criminal law of Jersey: that is to say, that a code be drawn up, embodying in as few words as possible the definitions of crime, and, so far as may be thought expedient, assigning punishments, in language which has already become familiar in the English law books. The effect of this will be to supply those who have to administer the Criminal Law in Guernsey with that which they cannot possibly obtain from their own Court, namely, a copious body of practical precedents accessible through authorized publications. The present Bailiff is an English lawyer of experience, and takes a very great interest in the discharge of that part of his duties which regards the administration of justice. We are ourselves greatly indebted to him for most valuable information and assistance in the progress of this inquiry, and feel confident that he is the person best qualified, from his familiarity with the existing law and the confidence which the Court place in him, to prepare a measure which shall remedy these defects. The amendments which have taken place in the law during the short period he has held the office, and the improvements which his legal experience has enabled him to introduce into the practice of the Court, are a satisfactory guarantee of his willingness and ability to cooperate with the States in preparing a definite system of penal law.

We recommend also that a House of Correction should be connected with the Gaol in Guernsey, and that the Court should be authorized to inflict the punishment of hard labour, in addition to imprisonment, in certain cases. We doubt whether such punishment would at present be legal in Guernsey. It is certainly, in practice, unknown there; and it is nowhere expressly provided by any law, with which we were made acquainted. The want of the means of inflicting it

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leads to periods of solitary confinement on bread and water, in some instances, as it appears to us, disproportionate to the offence.

We now proceed to describe the constitution of the tribunals and authorities charged with the execution of the Criminal Law in Guernsey, and the mode of proceeding therein.

The Supreme Criminal Tribunal is the Royal Court of Guernsey. Like the Royal Court of Jersey, it probably derives its origin from the Constitutions of King John, in the manner pointed out in our First Report. It exercises jurisdiction over all offences committed within the Bailiwick, with the exception of those described in the Constitutions as "casus nimis ardui." These are defined by the Précepte d'Assise to be treason, coining, and laying violent hands on the person of the Bailiff or any of the Jurats while in the exercise of his office. The cognizance of these offences is said to belong to the Court; and the punishment of them only is reserved to the Crown.

The Judge and Jurats of Alderney and the Seneschal of Sark also have a limited criminal jurisdiction within their respective Islands, which will be noticed in a subsequent part of the Report.

The Royal Court of Guernsey consists of the Bailiff of Guernsey, the twelve Jurats of the Court, and the Procureur and the Contrôle de la Reine. Six Advocates have the right of pleading before it. Its chief officers are the Prevôt, the Greffier, and the Serjeant.

The Bailiff is appointed by the Crown, and holds office during pleasure. He has a salary of 300*l.* per annum, in Guernsey money, which must be reckoned at a deduction of about 6 per cent. on the nominal sum. He has also fees, producing somewhat less than 100*l.* annually. An inspection of the proceedings which took place before the Justices in Eyre in the reigns of Edward the Second and Edward the Third leads to the conclusion that he was originally an annual officer. He is the President of the Court, and has the power of appointing a Lieutenant from among the Jurats, who presides in his absence. He is required by the Précepte d'Assise to be resident in the Island, and is to be capable of answering the King's Justices in all cases touching the Crown which happen there. His duty, as there stated, is to execute and carry into effect the ordinances, records and judgments (*regars, recors et jugements*) of the Jurats; and, if by ignorance, or otherwise, he shall happen to make any default or trespass against them, he is immediately to correct himself by the ordinance and good opinion of the Jurats, and keep himself according to such correction; nor is he to make any judgment by himself without the order of the Jurats. This, if taken to its full extent, appears scarcely consistent with his practice as the officer of the Crown and President of the Court. According to the present practice, he sums up the case in criminal proceedings, as well with regard to the law as the facts, collects the opinions of the Jurats, and delivers the sentence of the Court. He has, however, no voice in the proceedings, unless in the event of the opinions of the Jurats being equally divided, when he has the casting vote. It does not appear to be settled whether this privilege is confined to the case where the Jurats are equally divided between two opinions, or extends to all cases in which an equal number of the Court adopts different views, as is sometimes the case with regard to the amount of punishment to be awarded.

The twelve Jurats hold office for life. They are incapable of being removed, unless by promotion to the office of Bailiff, or in the event of being convicted of acting contrary to their oath of office, or, in the language of the Précepte d'Assise, *d'être reprins et diffamé de son serment.*

It was represented to us as a hardship that a person should be liable to be elected Jurat against his consent and compellible to serve for life; an order in Council, which is in the nature of a law, being requisite for his discharge. A complaint was made to us by Mr. Gosselin, one of the Jurats, that he had been so elected, and that, upon his petitioning the Crown for leave to resign, his petition had been referred to the States of the Island for their consideration, and by them rejected. He suggested that, as the Douzeniers are by the law of the Island not compelled to serve after the age of sixty, the Jurats also, on attaining that age, should have the power of resigning. It does not appear to us that there could be any objection to a law to that effect.

The Constitutions of King John direct the Jurats to be elected, "*de indigenis insularum, per ministros Domini Regis et optimates patriæ.*" The Précepte

d'Assise, on the contrary, states the ancient usage to be for the inhabitants and dwellers of the Island *(les habitans et demourans en la dicte Isle)* to make and elect the Jurats from among themselves. The Royal Commissioners in 1607, in order to bring back the election as near as might be to the ancient use, expressed in the Constitutions of King John, provided, by a Réglement made to that effect, that the "Bailiff and Jurats, with the Constables and Dozens of every parish" "shall have voices in the said election, and whosoever is nominated by the greater part of them, the Bailiff shall pronounce and declare him to be lawfully chosen." It is remarkable that the Réglement of the Commissioners does not mention the Rectors of the parishes as forming part of the elective body. They appear, however, to have always formed part of the States of Election. By the recent law of the 13th of December, 1844, the number of the electors has been increased by the addition of the Cantonal Douzaines of the town parish, in the manner before stated.

The Précepte d'Assise directs that the Jurats shall be elected from among the most notable and discreet, wise, loyal and rich men of the Island. They are, in fact, chosen from the most ancient and respectable families: but the limited number of the electors and the constitution of the elective body tend to make the office almost hereditary in some of them; and relationship by blood or marriage prevails to a considerable extent among the members of the Court.

No express qualification, beyond what has been stated, is required. A common practice is to elect those who have filled the offices of Constable and Douzenier. No legal education is considered requisite. Of the Court, as constituted at the period of our inquiry, one member only had practised as Advocate, and one had formerly practised as a solicitor in London; the rest were wholly unconnected with the legal profession. An election has since taken place, at which a gentleman who had filled the office of Contrôle has been chosen.

A question has arisen whether the Lieutenant Governor has a veto on the election of a Jurat. The assertion of the right is founded on a passage in Warburton's "Treatise on the History, Laws and Customs of the Island of Guernsey." The passage (p. 53.) is as follows. "The election being clear, the governor is to be made acquainted with it, and if he has nothing to object against the person chosen, he is then to be sworn within some few days after; but if the governor except against him, his exceptions being heard, the matter is to be determined by the King in Council." This, it will be seen, stops far short of asserting that an absolute right of veto is lodged in the Governor. We were informed that the right (either of veto or suspension) had been assumed and exercised by Sir Thomas Leighton, who was Governor in the reign of Queen Elizabeth, at the time of the framing of the "Approbation des Loix;" that it certainly did not exist before his time; and that it fell into disuse afterwards. No mention is made of such right in the Réglemens of the Commissioners before cited; nor have we been able to find any trace of it in the Précepte d'Assise, or any ancient record. We were not in possession of evidence sufficient to enable us to come to a decided opinion on the subject: but we are inclined to think, on looking at the descriptions of the offices of Governor and Jurat in the Précepte d'Assise, and at the mode of electing the Jurats as settled by the Réglemens of the Commissioners in 1506, subsequently to the time when Sir Thomas Leighton was Governor, that the claim has not any legal foundation. It is, however, very desirable that the question should be set at rest.

The Jurats are stiled, in the Précepte d'Assise, mean judges between our Sovereign Lord the King and his men inhabitants of the Island. They are also there said to have the cognizance, jurisdiction, precognition and sentencing (*jugemens*), in company with the Bailiff, of all matters of causes civil and criminal occurring in the Island, with the exception of the reserved cases before mentioned. They are also said to be placed and ordained in the name and place of four knights according to the establishment of the custom of Normandy:* and their office is declared to be well and faithfully (*loyalement*) to record and judge, according to their consciences, all and every the cases and causes of what kind soever that before the Bailiff and themselves shall be in law determined.

The Procureur de la Reine and Contrôle de la Reine are Law Officers appointed by the Crown during pleasure. The salary of the Procureur is 300*l.* per annum, that of the Contrôle 200*l.*: these officers have also fees, amounting annually to 30*l.*

* See the First Report, p. xxxvi.

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or 35*l.* for each. They answer, respectively, so far as they are the legal advisers of the Crown, to the Attorney and Solicitor General in England. But they also form a constituent part of the Court when sitting as a criminal tribunal, and conduct all criminal prosecutions, which, although directed by the Court, are technically said to be at the instance of the Officers of the Queen. No sentence of the Court can be legally passed until their "*conclusions*" have been given, that is, their opinion on the law applicable to the case and their view as to the effect of the facts proved, and the punishment that the crime demands. In performing these functions, they are supposed to act, not as advocates whose duty it is to bring the charge home to the accused, but as ministers of justice assisting the Court with their advice. Some such officers are evidently necessary in a Court whose judges are not lawyers, to prevent the decisions of the Jurats from infringing the law. But, since the practice has been to appoint a lawyer to the office of Bailiff, the necessity for the performance of this part of the duty of the Crown Officers is not apparent. Their power, as public prosecutors, is extremely limited, being confined to the conduct of the case in Court. Not only are they incapable of instituting criminal proceedings *ex officio*, but the Court decides, without the assistance of their conclusions, whether a party presented by the Constable shall be prosecuted or not, and on the form in which the charge is to be preferred.

The Crown Officers also appear in all cases where the interests of minors and persons incapacitated from taking charge of their own property are concerned; and proceedings for penalties for the infraction of Ordinances of the Royal Court must be prosecuted at their suit. Causes en adjonction also, the proceedings in which will be described hereafter, and actions of Clameur de Haro and Nouvelle Dissaisine, which, though civil remedies, are, in form, in the nature of criminal proceedings, must be instituted by one of the Law Officers of the Crown; and, if the defendant appears, it must be by the other. In civil cases they act as advocates.

The Advocates are admitted by the Royal Court, upon application, as vacancies occur, and are liable to be suspended or displaced by the Court for misconduct. There is no competition for the place of Advocate at present. From 1806 to 1824 there were only three besides the Law Officers of the Crown; and, between that period and 1846, the number has been full for only three years. There are at present four Advocates in practice; one of the body being under suspension, and one place vacant. No examination or particular course of study is required previously to admission. The practice is to study under an Advocate in Guernsey, and to attend lectures in law at one of the French Universities. There are no officers of the Court corresponding to attorneys, the Advocates performing the duty both of attorney and counsel. They are obliged to undertake the defence of criminals, but are entitled to their fees if the parties, for whom they act, have the means of defraying them. In the event of conviction, the goods of the offender are liable for the costs of the prosecution and the defence.

The office of Prévôt, in some measure, answers to that of Sheriff in England. As an officer of criminal justice, he has the custody of prisoners after their committal for trial; and it is his duty to see the sentence of the Court carried into execution. He holds his office for life, and is elected by the States in the same manner as the Jurats. His salary is 14*l.* per annum, to which, we presume, fees must be added.

The Greffier is the keeper of the records of the Court. It is his duty to register the actes and proceedings of the Bailiff and Jurats in criminal matters. In certain criminal proceedings he also records the interrogatory of the prisoner, and takes the examinations of the witnesses. He is appointed by the Crown, and holds office during pleasure. His office, as well as that of the Prévôt, may be discharged by deputy. He has a salary of 40*l.* per annum, with fees which he rates, after the payment of clerks, under 150*l.* per annum. He complains, and we think not without justice, that, while the salaries of other officers have been much increased, his salary has remained unaltered, though his duties have become more heavy.

The Serjeant is the Huissier of the Court: he also issues the summonses to parties and witnesses in criminal proceedings. He receives his appointment from the Crown. He has a salary of 50*l.* per annum.

The Constables also may be considered officers of the Royal Court. Each parish has two Constables, elected by the rate-payers in the mode before stated. Their power of acting is not confined to the limits of their respective parishes, but extends throughout the whole Island. On their election they take an oath of office before the Royal Court.

Besides the two Constables which St. Peter Port has, like the country parishes, there are, in that parish, four Assistant Constables who are appointed by the Douzaine of the parish. No qualification is required for the office of Assistant Constable, not even that of being a rate-payer. They are not ex officio members of the Douzaine. They were first appointed in the year 1736 by an Ordinance of the Royal Court, strictly as Assistants to the Head Constable. By a subsequent Ordinance of 1799, they were empowered to do all acts, in the absence of the Constables, which appertain to that office as far as regards the police of the town parish: it is, however, considered that their authority, like that of the principal Constables, extends throughout the Island.

The Constables and their Assistants constitute the whole Police of the Island, properly so called. Formerly it was usual for the Constables to obtain the assistance of the soldiers of the garrison in apprehending offenders. But, by an order made by the present Lieutenant Governor, 12th April, 1844, approved of by the Secretary at War and the Secretary of State for the Home Department, neither the Bailiff, nor the Royal Court, nor the Constables and Assistant Constables, can claim military assistance, unless with the sanction of the Lieutenant Governor. This is conceded only in the event of fires by night or day, and of great or dangerous riot.

To supply any want of force on the part of the ordinary Police, the Constables may, in case of necessity, apply to the Court for additional aid; whereupon persons presented by the Constables and Douzaine are sworn in to act as Special Constables, either for a limited period or jusques à autre ordre. In November, 1838, twelve special Constables were appointed for the parish of St. Peter Port to act for a limited time, in consequence of a number of robberies that had then lately been committed. When that time had expired, they had been found so useful, as assistants to the Police during the time for which they had been sworn in, that they were again presented, and have been since continued. The practice is, to present those only, as Special Constables, who have served the office of Assistant Constable.

As officers of police, the Assistant Constables and the Special Constables have the same power with the Constables. The Senior Constable, however, is considered chief of the Parochial Police; and the Assistant Constables are subordinate officers who ought to act under his directions.

It is the duty of the Constables to apprehend all parties charged with breach of the peace or crime, whether taken in the fact, or on the information and complaint of the party injured, or on mere suspicion. For this no warrant of a Magistrate or mandate from the Royal Court is required. The Constables act on their own authority in a quasi magisterial capacity. They ought, however, with all convenient speed, to make their report to the Bailiff and Law Officers of the Crown, and take their instructions with regard to detaining their prisoners in custody or liberating them, on a summons to appear at the next Court-day. A section of the Royal Court sits, every Thursday, for the purpose of hearing the charges of the Constables: no criminal case can be brought before the Court but by their presentment. They may, however, be set in motion by the Court, either immediately or through the Crown Officers, on complaint of their refusal to act; but an individual has no means of procuring a warrant for the apprehension of a party on a charge of crime, or a summons to compel his appearance to answer before the Court.

The Royal Court exercises criminal jurisdiction by means of the Cour Ordinaire and the Cour en Corps. The former acts as a Police Court, and as a Court of Instruction Criminelle; the latter for the trial of crimes and misdemeanours.

The Cour Ordinaire is generally called the Cour du Quartier, from the Jurats attending in rotation, in pursuance of an ordinance directing four of the twelve Jurats to attend by turns at the opening of the Court after every Chefs Plaids, and to continue to sit, every Court day, till the next Chefs Plaids; after which they are to be relieved by four other Jurats. The presence of the Bailiff or Lieutenant Bailiff, and at least two Jurats, is requisite to constitute the Court. These, however, need not be the Jurats du Quartier. But, although two Jurats with the Bailiff form a quorum, all have the right to be present and take part in the proceedings. The sittings of the Court are held every Thursday.

The Cour en Corps consists of the Bailiff or his Lieutenant, and, at the least, seven Jurats. It holds its sittings for the trial of crimes and misdemeanours

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every Saturday during term time. But it is usual, even during vacation, for the Court to assemble for the trial of a prisoner, on application being made to it for that purpose.

As a Police Court, the Cour du Quartier exercises summary jurisdiction in criminal cases of small importance, such as assault, breaches of the peace, and disorderly conduct. The practice also is to deal summarily with petty thefts. The limit of its jurisdiction is marked by the extent of punishment that can be inflicted. This cannot exceed imprisonment for a month, the whole or any portion of which may be in solitary confinement, and on bread and water. Whenever the offence charged, supposing it to be proved to its full extent, would be considered to be adequately punished by the infliction of such a penalty, the practice of the Cour du Quartier is to take it summarily. The opinion, however, of the Bailiff is that, when the matter is in the nature of a crime, such as theft, the party would be entitled, if he insisted upon it, to be tried by the full Court; but that, when it is mere disorderly conduct, and little more than a breach of the peace or an assault without matter of aggravation, the Cour du Quartier would be quite justified in taking it summarily, even *in invitum*. It also exercises summary jurisdiction in proceedings for penalties for the breach of Ordonnances where the penalty does not exceed thirty livres tournois. The Crown Officers form a constituent part of the Court, while acting in exercise of its summary jurisdiction. All proceedings are at their instance; and no sentence is valid unless given after hearing their conclusions.

The Cour du Quartier, as a Court of Instruction Criminelle, acts, in the first instance, as an inquest of crime. This is either a Grande Enquête or a Petite Enquête. The former is not of frequent occurrence. It takes place when a crime has been committed but the perpetrator is unknown, so that no charge is made against any particular individual. The Grande Enquête having been, upon due consideration, octroyée by an acte which the Court gives to the Law Officers, the Court, then, investigates the circumstances of the crime by examining on oath all witnesses who present themselves, with a view of discovering the guilty party. Inquests in the nature of our proceedings before the Coroner are also held before the Cour Ordinaire, and are instances of the Grande Enquête. But that form of inquiry is not confined to cases of sudden or violent death; on the contrary, it is applicable to all crimes and misdemeanours. On the evidence pointing to a particular individual as the author of the crime, he is apprehended, and a Petite Enquête takes place, where the investigation is limited to the examination of witnesses in support or disproof of the charge against him.

Both the Grande and Petite Enquête are probably referable to the proceedings by the Bas Justiciers, noticed in our First Report as the origin of the Enditement in Jersey. The Petite Enquête seems to have been formerly an inquiry preliminary to the apprehension of the party accused, and furnished the grounds on which a warrant for his apprehension was granted. It was anciently conducted for the most part by the Vicomte in Normandy, whose duties in this respect are particularly described in Terrien, Lib. xii. Chap. ii. There is no officer in Guernsey corresponding with the Vicomte of the Coustumier; but the "Approbation des Loix" states: "*nous usons du premier & second chapitre, reservé ce qui est dit du Viconte, ces choses appartiennent à l'office du Baillif et Jurez.*"

According to the modern practice, the Procureur and Contrôle are present, and take part in the proceedings of the Enquête, whether Grande or Petite. But this is apparently an innovation; they have no specific functions to perform there, and do not, as upon other occasions, constitute part of the Court. It is also evident that, according to the practice of continental Normandy, under an Ordonnance of Francis I., 1539, the information obtained by the Enquête was the ground on which the Procureur instituted criminal proceedings; and, on his commencing the prosecution, a *prise de corps* for the apprehension of the party accused, or a summons for his appearance, *ajournment personel*, issued according to the circumstances of the case.

The proceeding by Petite Enquête, whether resulting from the information obtained on the Grande Enquête, or (which is the ordinary course) from the discovery of facts supposed to implicate a particular individual, takes place only on the presentment of a Constable. Where the Constable has declined to proceed, and the case still appears to the Court to require investigation, the Court, either at the suggestion of the Law Officers of the Crown, or upon the application of the party insisting on the

charge, directs the Constable to take up the case. If he were still to refuse to do so, it seems that he would be punishable, but that the case could then be brought on only by being placed in the hands of some other Constable.

On presentment by the Constable, the investigation takes place at a sitting *au secret* of the Cour du Quartier, in the absence of the accused; the Law Officers of the Crown, the Greffier, the Prévôt and the Serjeant alone being present, besides the members of the Court.

Upon the information obtained from the preliminary examination, an "*acte d'accusation*" is framed by the Court, charging the accused with the facts deposed to by the witnesses. He is then called before the Court. The "*acte d'accusation*" is read to him; and, if he denies the crime, he is questioned by the Court upon the evidence previously obtained. This is called the "*interrogatoire.*" It is also taken at a secret sitting of the Court; the prisoner being alone, and not allowed the assistance of a legal adviser. The present practice, however, requires that he be told that he cannot be compelled to answer the questions of the Court, and that what he says will be used against him at the trial. This is a departure from the old law in Terrien and the Approbation, by which the accused, in the event of refusing to answer or not answering pertinently, would be subjected to the torture. We have pointed out, in our First Report, that the practice of torture seems to have been engrafted upon the Ancient Norman Custom: and we believe that, at present, it is legal in Guernsey, according to the strict theory of the law.

Upon the result of this examination, he is discharged or sent to take his trial before the Cour en Corps. If he is sent to trial, an acte of the Court is framed, reciting the charge against him, and ordering his imprisonment, either absolutely or in default of bail, and directing the law officers of the Crown to proceed against him.

Up to this point of the proceedings, although the Law Officers of the Crown have been present, as advisers of the Court, the whole conduct of the case has rested with the Court alone. The Court takes the preliminary examinations, decides whether the case shall be disposed of in a summary manner or sent to the Cour en Corps for trial, frames the acte d'accusation, and directs the mode in which the trial shall proceed, which materially affects the amount of punishment. The Acte d'Accusation answers to an English indictment, except that it is the act of a Court, and that it contains a direction as to the committal of the prisoner. It generally conveys fuller information than an English indictment, and appears to possess the additional advantage of being less subject to mere formal objections. The functions of the Law Officers of the Crown as public prosecutors then commence; the subsequent proceedings are carried on in their name; and they have the future management of the case. In point of fact, however, the intervention of the Law Officers takes place earlier. They are present at the examination *au secret;* they advise the Court; and one of them ordinarily administers the *interrogatoire.* But, in theory, these are merely the acts of the Court.

There are two modes of trying indictable offences in Guernsey. In each case the proceedings, from the forming of the Acte d'accusation, are before the Cour en Corps. One mode of trial is by *Procès extraordinaire,* usually called *Au grand criminel;* the other by *Procès ordinaire,* called *Au petit criminel,* or *Au criminel,* or *A l'ordinaire.* We have already spoken of this distinction, and have pointed out that it rests upon the nature of the punishment assigned to the offence, which is technically described in the Acte d'accusation.

The commencement of the proceedings in both modes is the same. A summons, under the hands of the Law Officers of the Crown and the Serjeant of the Court, first issues, requiring the appearance of the accused, whether in prison or out on bail, before the Cour en Corps, on a day named. If the proceedings are *Au grand criminel,* the form of the summons is "*à se voir adjuger aux peines et punitions imposées par les loix;*" and the act with which he is charged is stated to have been committed "*félonieusement.*" If the proceedings are *A l'ordinaire,* and the offence be punishable by fine and imprisonment only, the summons is "*à se voir adjuger à telle peine, punition ou amende que la Cour trouvera condigne:*" if the punishment may include flogging, pillory, or a banishment for less than seven years, the summons, instead of the word *amende,* has the words *châtiment corporel.* It repeats the contents of the charging part of the Acte d'accusation. On his appearance, the accused has the assistance of an Advocate to defend him, and is allowed a copy of his interrogatoire. The Advocate acts gratuitously, wherever the prisoner is unable to defray the expense of the defence. The prisoner's plea

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is taken at the time of choosing his Advocate. If he pleads Not guilty, the Law Officers of the Crown are ordered to proceed to the proof of the charge; and an acte of the proceedings is drawn up.

Up to this point the proceedings are the same, whether the trial is "*Au grand criminel*" or "*A l'ordinaire.*" But the mode of taking the evidence and conducting the trial differs essentially in the two cases.

The proceedings "*Au grand criminel*" are as follows.

After the case has been sent to proof, the first step is to take the examination of the witnesses in support of the prosecution. The preliminary proceedings, as before stated, are in the nature of an inquest to ascertain the fact of crime. Of these no record is kept, except the interrogatoire of the accused. The witnesses are, therefore, again summoned before the Cour du Quartier by the Law Officers and the Queen's Serjeant. Their number can in no case exceed twelve; for which limitation no authority or reason was suggested. On their appearance, the evidence of each witness is taken separately on oath, at a secret sitting of the Court, in the absence of the party charged and of his counsel. The Greffier is present and takes down each question as it is put to the witness and the answer. The depositions, so taken down, are severally signed by the members of the Court. The evidence is then said to be *paraphé*. A copy is also made and signed by the Greffier, and given to the Law Officers. When the examinations of all the witnesses for the prosecution have been taken, a day is assigned, for which each witness is summoned a second time before the same tribunal. His evidence is then read over to him; and he is asked, after being again sworn, whether he confirms and corroborates his deposition, and whether he wishes to make any addition to it or withdraw anything he has said. This process is called the "*Récolement des témoins.*" This differs from the practice in Terrien, according to which the original informations were preserved, and the witnesses, after the accusation had been framed by the Procureur, were only recalled for the purpose of confirming their previous testimony at the Récolement.

At the next meeting of the Court, the prisoner is summoned to appear and see the witnesses, whose names are inserted in the summons, confronted with him; and he is then furnished with a copy of their depositions. This is called the "*Confrontation des témoins.*" On this occasion the prisoner has the assistance of an Advocate, who, by a late order in Council, is furnished with copies of the evidence, on the morning of the Confrontation. Each witness is then brought before the Court in the presence of the prisoner, who is asked whether he has any objection to make to him. If he has, the nature of it is stated by his Counsel, and a note of it taken by the Court. The witness is then sworn afresh, and his deposition and récolement read over to him. He is then asked whether the prisoner is the person mentioned in his deposition; after which, the Counsel for the prisoner is at liberty to cross-examine him. The questions and answers of the witness, on the cross-examination, are taken down by the Greffier in the same manner as in the examination in chief. The evidence on the part of the Crown is then closed, subject to any objections on the part of the prisoner which have been reserved for the consideration of the Cour en Corps at the trial.

The prisoner is then at liberty to produce his evidence in defence. But, before so doing, he is compelled to give in a list of his witnesses, who are also limited to twelve in number, and to state the facts he proposes to establish by their testimony. If the Court considers the proposed evidence relevant, the witnesses are summoned by the Crown Officers. They are then examined in chief by the Counsel for the prisoner, and cross-examined by the Crown Lawyers; the questions and answers being taken down in writing by the Greffier in the manner before described.

It will thus have been seen that, in the proceedings "*Au grand criminel,*" the Cour du Quartier conducts the preliminary inquiry, frames the acte d'accusation against the prisoner, and takes the whole of the evidence in the case, subject to the objections of the prisoner to its admissibility, which are reserved for discussion by the Cour en Corps. The case is then ripe for trial, which, regularly, can take place only in Term Time.

At the trial, the Cour en Corps, consisting of the Bailiff or his Lieutenant and, at least, seven Jurats, being assembled, the proceedings commence by reading the acte d'accusation and the interrogatoire. The Jurats may be challenged, if they are so nearly connected as first cousins with the accused. But we believe that few instances of such challenges occur. Then the depositions of the witnesses, as well in support of the accusation as for the defence, are read. The Counsel for

the prisoner next addresses the Court, and is heard upon all legal exceptions to the proceedings, as well as upon the evidence. After the defence is concluded, the Law Officers of the Crown are heard. Their office is to state the result of the evidence, to advise the Court on matters of law, and to suggest the sentence which they deem suited to the case. This is technically called "*les conclusions des Officiers de la Reine.*" The Bailiff then sums up the whole of the case, as well on the law as the facts, and the Jurats severally give their opinions upon the guilt or innocence of the prisoner, and, in the event of their finding him guilty, on the amount of punishment to be inflicted. The decision of the greater number constitutes the sentence of the Court, the Bailiff, in the event of the numbers being equal, having a casting vote, but otherwise having no voice in the verdict or the sentence. The Bailiff passes the sentence. In strictness, if he be dissatisfied with the opinion of the majority, he has the power of suspending the passing of judgment for forty days. Some doubt, however, has arisen whether this power be not confined to civil cases.

The proceedings at a trial "*A l'ordinaire*" are as follows.

Up to the point of taking the plea of the prisoner, and the choosing the prisoner's counsel, the proceedings are precisely the same as those "*Au grand criminel.*" The mode of proof at the trial is the only essential difference between them. The witnesses on both sides are summoned by the Law Officers of the Crown for the day of trial; those for the defence, from a list furnished by the prisoner. The number on each side is limited to twelve. The proceedings commence by the "*évocation*" of the witnesses, all of whom, on being called, appear together at the bar of the Court; and, if no objection is taken to the admissibility of any of them, an oath is administered to all by the Bailiff. The trial then commences by reading the acte d'accusation and the interrogatoire of the prisoner. The witnesses in support of the charge are then examined *vivâ voce*, in the presence of the prisoner, and cross-examined by his counsel. The witnesses for the defence are also examined and cross-examined in the same manner. The evidence being concluded on both sides, the Counsel for the prisoner first addresses the Court on the whole case, and then the Law Officers of the Crown. The Court then proceeds to give the verdict and sentence, as in the mode before detailed respecting the trial "*Au grand criminel.*"

The proceeding called Cause en Adjonction, in which one of the Law Officers of the Crown is joined to the Partie Civile in actions for libel, slander and battery, exists in Guernsey. The nature of this proceeding, as practised in Jersey, has been described in our First Report; but some differences in the modes of instituting and carrying it on in the two Islands render a separate notice of it necessary here.

The first step in the cause is a summons served on the party complained of. On his appearance, the adjonction of the Law Officers of the Crown is prayed and permitted by the Court, as of course, unless cause is shewn to the contrary. If he makes default, the adjonction also takes place as of course. The cause then proceeds in the name of the plaintiff, "*et les Officiers de la Reine joints.*" The Crown Lawyers have claimed the privilege of sending the first summons in Causes en Adjonction, and have insisted that no Advocate, in strictness, can do so without their sanction. The present Procureur de la Reine, however, is of opinion that there is no such exclusive right as to the first summons; and he supports his view by arguing that the first summons precedes, and is intended to lead to, a decision of the Court upon the question whether the Adjonction ought to be granted at all; an argument which appears to us to have great weight. The Law Officers also claimed the exclusive right of pleading in such causes, the one for the plaintiff, and the other for the defendant. This was contested by the Advocates, who presented a petition to the Privy Council, in 1809, denying the right. Subsequently the matter in controversy was, by an Order in Council, referred to the Royal Court for decision. The result was that the right of the Crown Lawyers to plead, the one for the plaintiff and the other for the defendant, in Causes en Adjonction was confirmed, with this modification: that it should be lawful to either of the parties in the cause to employ an Advocate to plead for him in addition, who should be heard before the two Officers of the Crown. This continues to be the law at present.

The practical effect is that no Cause en Adjonction can be prosecuted without consent of the Procureur or Contrôle. The Court may refuse the Adjonction of the Crown Lawyers, but cannot compel it. This has been in effect decided by a case recently before the Court. Proceedings en Adjonction were commenced by one of the Jurats of the Royal Court, against his Excellency General Napier, the

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Lieutenant Governor of the Island, for an alleged libel. On the refusal of the Crown Lawyers to commence the action, a summons was issued by one of the Advocates of the Court; and, on default being made in appearance, permission for the Adjonction followed as a matter of course. The Law Officers, however, refused to be parties to the proceedings, on these several grounds: that, as Officers of the Crown, they could not proceed against the Governor; that the Governor was not amenable to the Court; and that they had been commanded by the Government at home not to proceed. The plaintiff, upon this, complained to the Court of a denial of justice; and the Court held itself incapacitated from proceeding further in the cause, for want of the Adjonction of the Law Officers. This case involved, not only the question as to the power of the Law Officers to refuse their adjonction, but also the question how far the Governor was amenable to the Court for an act done in his private capacity. So far, therefore, as the Royal Court can decide, it appears to be settled that the Court cannot order an adjonction where the Law Officers refuse their sanction: but, as far as we can understand the decision, the Court did not determine how far the particular grounds assigned by those functionaries for their refusal were valid or not. The second of the grounds assigned was supported by a precedent of the date of 1783. To us, it rather seems probable that a complaint by one of the Royal Court, or indeed by any one, of an act done by the Governor is one of the "*casus nimis ardui*" spoken of in the Constitutions of King John, and properly reserved for the judgment of Your Majesty in Council. The Royal Court, however, seems to have preferred placing the decision on grounds which make the right of a party to a civil remedy depend on the will of the Law Officers of the Crown, to the risk of appearing to abandon one of the supposed privileges of the Court.

The proceedings, after the adjonction is granted, proceed much in the same way as civil causes, the principal distinction, up to the time of the pronouncing judgment, being in respect of the Counsel employed. But the judgment includes, if the Court thinks fit, both damages to the party and a fine to the Crown.

We have now to offer our opinion upon the constitution and practice of the tribunals.

The law which regulates the criminal practice in Terrien is far more defined and systematic than that which relates to crimes and punishments. It differs, however, essentially from the proceedings under the old Norman law. The Enqueste du Pays, described in our First Report, had become obsolete at the time when Terrien wrote. After describing the ancient mode of proceeding, he goes on to say, (l. xii. c. 28. l.): "*Toute accusation criminelle se poursuit aujourd'huy par la voye de Justice, selon la forme introduite par les ordonnances Royaux:*" and again (l. xii. c. 31. l.): "*se fait le procèz d'un prisonnier selon la forme contenue aux ordonnances Royaux.*" These are laws, for the most part, of Francis the First. It is difficult to suppose that they formed part of the customs or usages of Guernsey at the time of the Approbation des Loix. The present practice, however, is essentially derived from them, and with very slight variations, most of which have been already noticed, is in perfect accordance with their enactments.

The Police, both as the body charged with the general maintenance of the peace, and as comprising the individuals through whose intervention all offences must be brought under the cognizance of the Court, become a necessary subject of consideration.

The extent and nature of the authority of the Senior Constable is undefined; different opinions are entertained upon the subject; and, whatever the authority may be, there appears to be no means of enforcing it. Mr. Mellish, a very active constable of St. Peter's Port, told us "that there is nothing that wants regulating more than that in the Island of Guernsey." And this we may state as the unanimous opinion, with respect to all the constabulary functions, of all who gave evidence on the subject. There is no organized mode of acting, nor any report systematically made from the Assistant Constables to the Head Constable; neither is there any day or night patrol of the streets, except where some unusual danger to the peace is anticipated.

In the discharge of their duties, the Constables, in practice, assume a discretion, which appears to us inconsistent with their functions as police officers. The law is understood to entrust cases of mere drunkenness or disorderly conduct to their discretion, to be presented or not to the Court, as they may think fit; but, where a party has been once taken into custody on a charge of violence, "*voie de fait,*"

or crime, the offence must be dealt with by the Court. How far Constables are justified in refusing to entertain such a charge, or permitting it to be afterwards withdrawn, or are warranted in investigating its truth before apprehending the party accused, is left in doubt. Such discretion is, however, assumed by them.

In one case, an Advocate of the Royal Court had stabbed an Englishman with a knife, upon some fancied provocation, inflicting two wounds upon him. The circumstances of the case were of a nature which rendered the party wounded an unwilling prosecutor. The matter, therefore, although known to the Constables, was not, in the first instance, brought before the Court. It becoming, however, afterwards the subject of public talk, the Court directed an inquiry which terminated in the trial and conviction of the offender. But it does not appear to have occurred to the Court that the Constable had been guilty of any dereliction of duty in forbearing to present the case as soon as he was aware of the crime.

In another case, a complaint was made against the captain of a foreign vessel, for ill using one of his ship-boys. The Assistant Constable had himself been the master of a vessel; and, being satisfied that the boy had not been beaten more severely than masters of vessels are in the habit of beating their apprentices, he took upon himself to tell the boy that he had better go aboard again. He accordingly returned to the ship. The ill treatment was repeated with aggravation; and the boy died, as it was alleged, in consequence. The master was afterwards tried for the murder by the Royal Court, and acquitted.

The mode also of reporting the apprehension of offenders to the Bailiff and the Law Officers is very informal. No official books of the charges are kept; and the proceedings are altogether irregular. This will best be explained by one of the cases brought before us.

An Assistant Constable had taken a man up for drunkenness and assault, one Thursday, after the sitting of the Court. He was conveyed to prison, and kept there till the following Wednesday, when the Constable wrote to the gaoler to say that he, the Constable, was too ill to bring the prisoner before the Court, and that the gaoler might let the prisoner out. The latter was accordingly set at liberty. This was regular, so far as the gaoler was concerned; persons in confinement, before examination, though in the gaol, being still in custody of the Constable. The man afterwards proceeded by a cause en adjonction against the Constable for the false imprisonment. It appeared, on the trial, that the Constable, while conveying him to prison, had met the Procureur in the street and told him he had a man in the cart who had behaved very ill, detailing the circumstances. This constituted the defence to the action. The Court held that, the man having committed an assault and being in a state of drunkenness, the Constable was justified in putting him in prison, and that, having mentioned the case to the Procureur, he was relieved from any responsibility for his detention. The plaintiff's case was, accordingly, dismissed with costs. According to the law, as represented to us, if the charge was mere drunkenness, the Constable had no right to detain the prisoner so long; if it was more, he was bound to report to the Bailiff and the Law Officers, and had no power to liberate him after he had made his report. It is possible the Court was desirous of protecting the officer who had acted bonâ fide and without malice. But, in any view, a greater degree of regularity in the proceedings would have prevented any charge against the Constable, and any imputation on the Court.

Another department of the Constables' duty, connected with the Police of the Island, is the treatment of strangers. The relief of the stranger poor is administered by them. By an Ordonnance of the Royal Court of the 30th of April, 1821, they are also authorized to *prevent* persons of evil life, or without means, or who have no occupation, from settling in the Island. The Ordonnance goes on to direct that no favour be shown to such persons, particularly at the beginning of their residence. *Les personnes de mauvaise conduite, les ivrognes, les fainéants ne doivent point trouver grâce dans leur paroisses, particulièrement dans le commencement de leur séjour.* The Constables are authorized by their office to send them out of the Island, apprising them that they may appeal to the Court. They are directed to act with strictness (*sévir*) against persons of this description, but to show indulgence towards those who, after residence more or less long, have given constant proof of good conduct and industry. We were informed that, in practice, the Constables never proceed to remove strangers from the Island for disorderly conduct, unless by sentence of the Court, and that those only who have become chargeable are, in point of fact, sent away on the authority

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of the Constable. But it is questionable whether even the Court ought to have the power of removing British subjects from the Island on so vague a charge. It appears to us that, in matters of crime, the punishment of all ought to be equal: and we think it right to draw your Majesty's attention to the fact that this Ordonnance is an instance of the exercise of that legislative power, by the Royal Court, which we have already alluded to as incompatible with its functions as a Court of Justice. The removal of aliens evidently depends on different considerations.

A party becomes chargeable who applies for relief, or who is in such a situation that the Constable thinks it necessary to relieve him and does relieve him. As many as four hundred persons have been sent from the Island by the Constables in the course of one year as chargeable. Cases of individual hardship certainly sometimes occur. In case of refusal, a complaint is made to the Court stating the party to be "*au charge*." An inquiry then takes place as to the fact of chargeability; and, if it is satisfactorily established, an order of the Court is made for the removal of the pauper, unless he can find security not to continue chargeable. Inquiry is also made into the place of his birth; but in effect he is almost always sent to the nearest English port. The annual cost of the stranger poor in the parish of St. Peter Port, including the expense of their passes from the Island, amounts to 800*l.*; and the increasing communication between England and Guernsey makes this a subject of great importance. It falls within the scope of our inquiry to notice it only in connection with the duties of the Police: but it appears to us to deserve the attention of Your Majesty's Government. It is of course proper that the Island should be relieved from the burthen of maintaining the stranger poor; but, in the mode in which the law is administered, the being a stranger and in want comes to be considered in the nature of an offence to be treated with more or less rigour at the discretion of the Constables. This is clearly objectionable. Neither does the power of appealing to the Court offer sufficient security. It is seldom acted on; and the shape which it assumes in practice is an application by the Constables to compel the departure of those who refuse obedience to their orders. We think that the whole of the law with regard to the relief and removal of the stranger poor requires revision.

The peace of the Island is generally well preserved; and the instances of crime are rare. This we attribute, not to the system of Police, but to the smallness of the Island, and especially of the principal town, and to the absence of those habits which, in richer and more populous countries, produce at once a temptation to crime and a population liable to the temptation. To these circumstances, also, we attribute the fact that so little attention has been directed to the state of the Police, and that the system remains in so rude and unsettled a state. Had an emergency arisen, it would, we think, have been felt, and in case of any future emergency it will be felt, that much change is necessary. The system is defective from the want of a superintending officer; from the Constables having other avocations, the Head Constables being for the most part gentlemen or merchants, and the Assistant Constables tradesmen, who are glad to be relieved from the office as soon as their term of duty expires; from the absence of any law strictly defining the duties and limiting the power of the Police; and particularly from the connection of the Head Constables with the Royal Court, as members of the States of Election and assistants at Courts of Chefs Plaids. The amount of the population and the state of public opinion do not perhaps necessitate so great a change as we were compelled to recommend in Jersey; but the evil, although less in degree, is the same in nature, and will probably, at some time or other, demand the same remedy. We think that the inferior officers of Police ought to be paid, and that some at least of them should exclusively and permanently devote themselves to the duty, as a distinct calling: and that, if the present mode of election be retained, the Constables should be placed under the controul of some responsible officer. It further appears to us that the office of presiding in the Douzaine, and acting in the States of Election, ought not to be joined with Police duties. These functions, each important in itself, require very different qualifications: and, if they were separated, the result would probably be that each would be better performed.

We are of opinion that the method by which alone offences are brought within the cognizance of the Court is objectionable. We see no reason for intrusting the Police with so large a discretion; nor do we think that parties desiring to prosecute have, in the present system, sufficiently ample means of producing cases.

We recommend that, as we have already suggested for the case of Jersey, there

should be three modes of prosecuting. We will for the present suppose that some tribunal for preliminary inquiry (either that now existing, as the Cour du Quartier, or any which it may be thought desirable to substitute) is to exist, distinct from the Court which is to try the case. We suggest that every individual should have the power of bringing a charge before this Court, and of obtaining a warrant for compelling the appearance of the accused party, where such Court, on an *ex parte* application, decides that the case ought to go on. We think, also, that the Law Officers should have the power, *ex officio*, to demand a warrant. And that, where the Court of preliminary inquiry has refused a warrant, it should be competent to the party to bring the case by affidavit before the Court which is to have the power of reviewing (as we shall hereafter suggest) the proceedings at trials; and that such Court shall then grant or refuse a warrant. For the subordinate details which we would recommend as to this stage, we refer to our First Report, page xliv.

We have already stated that the Cour du Quartier conducts the investigation prior to the committal of the accused, and decides on the form of the "*acte d'accusation*," on which the amount of punishment eventually depends. In proceedings "*Au grand criminel*" the whole of the evidence also is taken before it. It thus virtually becomes the prosecutor of the crime. The very act of directing the committal and framing the indictment implies that its members have formed a strong opinion on the guilt of the accused. Yet they form a part of the Cour en Corps by which he is eventually tried. When that Court consists of a quorum of seven, the members of the Cour du Quartier may constitute the majority; but in all cases their opinion necessarily influences the Court. In the event of an equality of opinions, the casting vote rests with the Bailiff who has presided in the Cour du Quartier, and who now presides in the Cour en Corps. But the evil does not rest here. Wherever the case is of a nature to excite great interest in the Island, many of the Jurats take part in the proceedings before the Cour du Quartier, and thus come to the trial with minds more or less affected by what they have heard before. The inconvenience of this is felt. The Bailiff and the most eminent Advocates in the Island have expressed an opinion that the members of the Cour du Quartier who have acted in sending the party to trial should be incapable of acting as members of the Court at the trial. In this we entirely concur.

The preliminary examinations "*au secret*," and the consequent interrogatoire of the accused, appear to us equally objectionable. But our opinion with regard to them is not that of the Bailiff and the majority of the lawyers of the Court. This part of the Criminal process differs so essentially from all that we have been accustomed to, as English lawyers, that we were anxious to have the subject discussed before us, in order to ascertain the opinions of the members of the Court, and the Advocates, on the subject. With one exception, that of Mr. Falla, a gentleman very extensively engaged in the defence of criminals, the members of the Court, including the Bailiff and the Bar, were, more or less strongly, in favour of continuing the practice. The value of the Bailiff's testimony in favour of the system is the greater from his having been an English lawyer, filling criminal and civil judicial functions in England, and from his avowing that his opinions had been changed by experience. We are bound also to add that it was an unanimous opinion that the practice of the Court had much improved under his presidency; so that his opinion in favour of retaining the ancient system could not possibly arise from prejudice or illiberal dread of change. We feel diffident in dissenting from such authority; but the reasons alleged in support of the present system have failed to convince us.

We have stated it as our opinion that the preliminary examinations were originally informations on which the Court directed the apprehension of the party. In this view their secrecy would be reasonable; and they would necessarily be conducted in the absence of the accused. But, when he is already in custody, it is agreeable to the first principles of justice that he should be confronted with his accusers. So far is this from being the case that, according to the present practice, the informations are not taken in writing. Thus the party charged has no means of comparing the evidence at the trial with that taken before the Cour du Quartier; and the best materials for instructing Counsel, as well for the prosecution as the defence, are withdrawn. This inconvenience was strongly felt by the Bailiff, who said: "I know of no improvement which would be so great here, as that of taking down in writing all the evidence upon which a man is committed, and letting the Counsel for the prisoner have copies of it a certain time before the

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trial. I believe that would secure two advantages: I think it would give the prisoner pretty nearly the same advantage as if he were present, while it would reserve to the Court all the power it derives from a secret examination." The only reason suggested for the present practice was that, it being a secret Court, what passed there ought not to be made known. This, however, assumes that the investigation ought to be secret. We believe that the chief advantage derived from the present practice is the opportunity it gives to the Court of testing the truth of the prisoner's answers on his interrogatoire. Its utility therefore depends upon the propriety of that proceeding. It is certainly not, at first sight, contrary to justice, that a party accused of crime, who has heard the evidence against him and has had an opportunity of questioning the witnesses, should be interrogated to elicit his explanation of the facts, before he is committed for trial. If means could be devised to ensure its never being abused, the interrogatoire, so conducted, would be perhaps a proper mode of arriving at truth. But it cannot be said to be necessary for that purpose. Its utility was maintained by the Court and members of the Bar chiefly on the ground that the truth told by a man in answer to questions by the Court, without his having heard the evidence which suggested them, gives great weight to that part of his statement which is otherwise incapable of proof. But this is precisely the objection to the interrogatoire as conducted by the Royal Court. An innocent person, who is perfectly intelligent and honest, has nothing to fear from any criminal prosecution fairly conducted. But most of the persons accused of crime are ill informed; and such persons are led into contradiction and falsehood by the desire to evade circumstances which they feel to make against them. The learned Advocate before referred to, Mr. Falla, put this very forcibly in his evidence. He was, indeed, dwelling principally on the case of a prosecution instituted against several parties at once; but mischiefs of a similar kind seem to be incidental to most cases. He said: "When four or five persons are called in private into Court, one after the other, and questions are put to them, the first impression on their mind is that the Crown Lawyers and the Court wish to make them declare different things; and an ignorant or a timid person, with that thought, is not capable, in my opinion, of giving a faithful statement; and, if he does not, it is sure to turn against him." We concur in this. Statements of otherwise unimportant facts, which, if truly made, are relied on as proof of the innocence of the prisoner, must, if betraying attempts at evasion, have the contrary effect, to his prejudice. Stress was also laid on the practice of informing the prisoner beforehand that what he says will be used against him at the trial, and that he is free to answer or not, as he chooses. When his statement, as in English proceedings, is spontaneous, the caution coupled with the information that he is not required to say anything has its proper place. But the proceedings by the interrogatoire are essentially compulsory. Formerly they were enforced by torture. The chapter of Terrien which authorizes its application is sanctioned by the Approbation des Loix; and, although the humanity of modern times has rendered the practice obsolete, no law has made the infliction now unlawful. It is part of the same "Ordonnances Royaux" which regulate the Criminal practice of Guernsey: the practical abolition is merely a humane usurpation. But it is obvious that the inference to be drawn from a refusal to answer must be that the party is incapable of explaining the facts which make against him. Again, he is not allowed the assistance of Counsel, who would probably advise him not to answer. Such a privilege would amount to the abolition of the interrogatoire. In truth, a voluntary interrogatoire is a contradiction; and the compulsion of the process, once physical but still moral, is not the least objectionable part of the system. The caution to abstain from answering, if the party thinks fit, is always given in words; but a prisoner, acting without counsel, will almost always, in practice, feel himself bound to answer. Then the questions put are those which arise from evidence which has been so arranged (and quite properly) as to give the fullest effect to the *primâ facie* case of accusation. The answers given to such questions are given at a great disadvantage; and, probably, this disadvantage is even exaggerated by the prisoner, who is pressed with the circumstances of suspicion marshalled in their most formidable order. Hence arises a temptation to evade and deceive, by which an ignorant person would be seduced, however innocent of the offence charged. Another very dangerous feature in this practice appears to be that its tendency is to engage the Court, which conducts the examination, in a contest with the prisoner. We were assured that this in fact did not occur: and we are quite ready to believe that the members of the Court

have not consciously allowed themselves to be drawn into such a course. But the danger is that the objectionable feeling will arise where the Court is conscious of nothing but an exercise of ingenuity in the pursuit of truth: and that this danger is not imaginary must, we think, be obvious to any one who has read much of the interrogatories administered by the Courts in foreign Criminal Tribunals. We cannot see why all the advantages which this practice is alleged to possess may not be attained by merely reading over the adverse evidence to the accused, and then bidding him tell his own story, if he thinks fit. It is impossible to deny the efficacy of the present practice as an instrument for the occasional detection of crime; but it is equally clear that the practice is liable to mislead, even when administered with the purest intentions. We have no doubt that the members of the Royal Court were perfectly sincere in assuring us that it is often of the greatest use to a prisoner, and that they never knew an innocent man condemned in consequence of it. But it appears to us dangerous to make legal guilt depend upon anything short of proof from extrinsic evidence or the voluntary confession of the accused.

With respect to the mode of conducting the trial, no valid reason occurs to us why one course should be followed when the proceedings are "*Au grand Criminel,*" and another when they are "*A l'ordinaire.*" The practice of taking the evidence in the former case in the absence of the accused is open to many objections. These are not removed by giving him a copy of the depositions at the "*Confrontation des témoins,*" and permitting his Counsel then to cross-examine the witnesses from the written documents. Every one, who is at all familiar with the proceedings of Courts of Justice, knows that the value of cross-examination depends on its growing out of the examination in chief, and that much of its effect is derived from the demeanour of the witness while subject to its test. According to the mode pursued in Guernsey, the Counsel for the defence is deprived of this advantage; and, what is of greater importance, the Court loses the opportunity of judging of the weight of a witness's testimony from watching the manner in which his evidence is given. The advantage which written depositions are supposed to afford of weighing the evidence more accurately does not, we think, make up for the want of this.

The proceedings "*Au grand criminel*" are, however, now of comparatively rare occurrence. There have been only twenty cases so tried during the ten years preceding this Inquiry; and there is evidently an inclination, on the part of the Court, to withdraw from that mode of trial all cases which do not require a very severe punishment. A strong feeling exists in favour of its abolition.

The proceedings on the trial "*à l'ordinaire*" are free from this last objection: but many defects are common to both modes of proceeding.

The whole law of evidence is in a most unsatisfactory state. This branch of law, in all systems, is to be sought rather in the practice of the Court than in positive enactments. In Guernsey, the written law of evidence is, for the most part, in direct restraint of the elucidation of truth; while the practice of the Court, from the nature of the tribunal and the absence of recorded decisions, is reducible to no rule. This becomes more mischievous from the same individuals having to decide on the admissibility of the evidence, and its effect when admitted.

The restraints imposed on testimony are unreasonable. In every trial the number of witnesses that can be examined, whether for the prosecution or the defence, is limited to twelve. No boy under the age of fourteen, nor girl under the age of twelve, and (in strict law, though, as it seems, the practice is less stringent,) no deaf or blind person, is admissible as a witness. The wife is not allowed to give evidence against her husband, even in the case of personal violence committed by him upon her.

The objection arising from relationship is carried to a great extent, and is found to be attended with great practical inconvenience in a small community where frequent intermarriages of necessity multiply the objection. By misapplying a passage from the Coustumier cited by Terrien, which, in the opinion of the ablest lawyers of the Island, relates only to Jurors and has no reference to witnesses in the modern acceptation of the word, a practice has grown up under which no relative, within the degree of first cousin once removed to a party charged with crime, is compellible to give evidence against such party, or is admissible as a witness in his favour. The Crown may call such a witness; but the rule is that he is not compellible to give evidence, when he could be rejected if tendered on the other side. The exception is that the evidence of relations is admissible in proof of an alibi. This also rests on a passage from Terrien (l. ix. c. 33. 5.) which, in the

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opinion of the very learned Advocate who was examined on the subject (in which we fully concur), has also been misunderstood. This exclusion of evidence in so many cases has in practice been found so inconvenient, that an attempt was lately made to pass an Ordonnance of the Court in Chefs Plaids, to render the evidence of relations, beyond the degree of brother and sister, admissible in all cases. An objection was, however, taken, that the alteration involved the repeal of the law contained in Terrien, which, according to the received opinion, the Court in Chefs Plaids has not the power to effect. The proposed Ordonnance was therefore rejected; although we have seen that the Court, in its judicial capacity, has not at all times considered itself so fettered. The consequence is, that the law remains hitherto unaltered. We thought it right to collect the opinions of the Members of the Court and the Advocates on this point, as the objection to the present practice appeared to us so obvious. We state, as an instance of the tenacity with which ancient usage is adhered to in Guernsey, that all the Jurats and the Advocates, with only two exceptions, were opposed to admitting the evidence of relations within the degree of first cousins.

The mode of conducting the trial at the hearing is equally objectionable. The want of some statement by the Counsel for the Crown of the facts to be proved against the prisoner is felt to be a great inconvenience. It is difficult to imagine how, in its absence, the attention of the Court can be drawn, in intricate cases, to the material points in the evidence during the progress of the trial, or how the defence can be properly conducted. Counsel complain, with great reason, of the embarrassment consequent in addressing the Court on the law and facts of the case at the same time, before the Counsel for the prosecution have been heard. The conclusions of the Procureur and Contrôle, in dealing with the facts, may, as regards the Court, in some measure supply the want of an opening speech. But the functions of these officers, partaking of the Advocate and Judge, are contradictory, and only reasonable on the supposition that the Court, without such aid, is incapable of arriving at a clear perception of the facts or applying the law to them. Where the Bailiff is a lawyer, whose duty and practice it is to present both to the Jurats, the weighing of the evidence and the consideration of the punishment would in our opinion be with more propriety intrusted to him, the Law Officers of the Crown being confined to the duties cast upon them as public prosecutors.

The discussion of the amount of punishment, before any decision is come to on the prisoner's guilt, is objectionable in another point of view; that it generally involves a consideration of his previous character and conduct. Prior convictions are stated against him, as part of the speech of the Procureur and Contrôle, for the purpose of justifying a conclusion for a heavier punishment. This, however unjust, is the necessary consequence of the mode in which the judgment of the Court is given, each individual Jurat expressing his opinion at once on the guilt of the prisoner and the punishment to be inflicted.

It appeared to us that many of these defects owed their origin to the Court having, in all cases, to decide both the law and the fact. We, therefore, in the course of the inquiry, suggested the propriety of separating the decision on the law and the awarding of punishment from the decision on the fact. The advantages of such an alteration were generally admitted: but it appeared, upon discussion, impracticable to separate the Bench into distinct bodies for this purpose. We were informed that the limited number of Jurats did not admit of a division, by which part might sit with the Bailiff to decide the law, and another portion perform the functions of a jury. It was also objected that those who had been so long in the habit of deciding the law for themselves would not be inclined to receive it from any one else. We felt the weight of these objections; and we proceeded to inquire as to the views entertained respecting the propriety of introducing trial by jury. The Jurats, as well as the Law Officers and Advocates of the Court, all concurred in opinion that it was incapable of being carried into effect in Guernsey: and the Bailiff, though less decidedly, appeared to take the same view. It was evident that the members of the Royal Court regarded the introduction of a jury as involving the destruction of their own functions as criminal judges. Every objection was therefore made to the suggestion.

The objections were derived from the size and population of the Island, which would, it was said, render it difficult to find a jury who should come into Court without some previous knowledge and impressions with regard to the case to be tried; from the strong local feeling existing in the country parishes, and the extraordinary

intricacy of family connections and interest; lastly, from the existence of two different languages in the Island, the one familiar to the inhabitants of the country parishes, and the other to those of the town. It was also pressed upon us that the Jurats are constantly under the eye of the public, which renders them careful and guarded in the discharge of their duties; that their decisions are come to in public, each Jurat not only giving his vote but stating his opinion in open Court; that Jurors, on the contrary, would go back into the masses again at the conclusion of the trial, and be no more before the public. It was also insisted that the Jurats, from their habits of weighing evidence, acquired by constant practice both in civil and criminal cases, are more likely to decide questions of fact with a probability of arriving at the truth than jurymen who, in a place where crime is so rare as in Guernsey, would be but seldom called on to discharge these duties. These objections are undoubtedly entitled to consideration: and another, which was urged, is perhaps still stronger; namely, that in so small a community it would be almost certain that jurors, indiscriminately taken from rate-payers, would, before and after discharging their office, mix in society with parties feeling strongly on the event of the inquiry, and that the institution, if so introduced, might thus be the cause of aggravating those tendencies to ill will, between individuals and families, to which a limited population is peculiarly subject. To another objection, urged with much earnestness, we attach no weight. It was said that the change would be inconsistent with the privileges of the Island. If this expression means the privileges of any one class or body of men, we are persuaded that those who insist upon the claim would repudiate it if the supposed privileges were found to be inconsistent with the general good of the Island. If it means privileges common to all the inhabitants, then the question is merely, as before, whether the supposed privileges be beneficial or not. If not, that which is called a common privilege is simply a common grievance: if beneficial, the argument is superfluous. We point this out because, however obvious the answer is, the objection was sometimes suggested, and oftener, we believe, tacitly assumed, as an argument against other changes, where that which it was proposed to change would, in countries familiar with constitutional principles, have been attacked as an intolerable oppression.

When the evidence on this point was given before us, no one expressed an opinion in favour of introducing trial by jury, except the rector of two of the country parishes. He urged that the difficulty as to the languages had been much exaggerated and would continually decrease; that the evils of family connection already existed strongly on the Bench; that the number of persons fit for jurors was ample; that an unfair verdict of a jury might be subjected to review, as in England, which was impracticable on the present system of Guernsey.

Since our return to England, we have received from the Constables of St. Peter Port the copy of a letter addressed to Your Majesty's Secretary of State for the Home Department, on the subject of the introduction of trial by jury into Guernsey. It is signed by the two Constables of St. Peter Port; by one Constable of the parish of St. Sampson; one Douzenier of the Vale; one Douzenier of Câtel; one Constable and two Douzeniers of St. Saviour; two Douzeniers of St. Pierre du Bois; one Douzenier of Torteval; one Constable of the Forest; and one Douzenier of St. Martin. There are no signatures from the Douzaine of St. Andrew's parish, nor from the Cantonal Douzaines of St. Peter Port unless they are to be considered as represented by the two constables. It states that the inhabitants, whom the above parties represent, feeling deeply the importance of the question of introducing trial by jury in the Island, have met in their respective parishes, and have unanimously adopted resolutions against such a change in their constitution. They declare their entire concurrence with the sentiments expressed by the Bench and Bar; and they urge that they already possess a real jury in the Jurats selected by themselves, who have acquired legal experience; and they contend that the introduction of a trial by jury would impose a new duty without any public advantage.

We have had no means of ascertaining the circumstances under which the meetings referred to were held, nor by what number of the inhabitants they were attended. We can therefore form no opinion of the value of the document. It is certainly signed by a very small proportion of the Douzaines of the parishes to which it refers. If we could persuade ourselves that those who have refrained from signing it are either indifferent or favourable to the alteration, it would add little force to the objections urged by the Royal Court pending our inquiry. But no manifestation of an opposite feeling has been made: and we are decidedly of opinion that the wish of the majority of the inhabitants of Guernsey is at present

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adverse to the change. It is important to recollect that any system of law, which is to be worked by the instrumentality of the people, must fail, however good in other respects, where the people themselves look upon it with dislike.

The abolition of the old Norman mode of trial by the Enqueste du Pays, and the substitution of the French mode of conducting criminal trials, have withdrawn the people from the habit of taking part in the administration of justice, and, to a certain extent, unfitted them for the duties of jurymen. In Jersey, where the old Norman institutions have been retained and the constitution is more popular, no inconvenience is felt, in practice, from the interference of family connection or local feeling or popular prejudice with the working of trial by jury. The population of that Island is not double that of Guernsey; and criminal trials are far more frequent: yet no difficulty is experienced in selecting a jury of twenty four impartial men capable, from their education and their familiarity with both languages, of trying the cases which arise there. We were disappointed on being informed that such is not the case in Guernsey. And, however unwillingly, we feel ourselves compelled to adopt the opinion, almost unanimously expressed to us, of the unfitness of trusting the body of the inhabitants of Guernsey, in their present state of intelligence and social feeling, with so popular an institution. This is the effect of the evidence given to us by certainly not the worst instructed members of the population, and not only acquiesced in, but earnestly confirmed, by all those who have spoken on the subject, with one single exception. We, therefore, are unable to resist a conclusion which, if less strongly vouched for, we should, as strangers to the inhabitants, have considered prejudiced and harsh, and which nothing that came under our limited personal observation would have authorized us to adopt. Nor can we now believe that such an inferiority to the rest of the population of Your Majesty's European dominions can be permanent. In early times, while the justices in Eyre continued their circuits in Guernsey, trial by jury was frequent. Their records, in the reign of Edward the Third, shew that at that time crimes were tried in Guernsey by a jury of the parish in which the act was committed. We are disposed to think that the discussion of the question, during the progress of our inquiry, will not be without its use, and that, in progress of time, the objections which now are felt to the introduction of a jury in criminal trials will yield to a sense of the advantages of that mode of proceeding, and a capacity for taking part in it be created. We think, however, that at present there would be great difficulty in framing, on the principle of assessment to the local taxes, a jury pannel which would not include many who would be found incompetent to the adequate discharge of the duty, and exclude some who would be capable of it.

The advantage, however, of having the facts found by a tribunal distinct from that which applies the law and imposes the penalty is, in our opinion, so great, and the want of it necessarily accompanied by so many evils, that every effort should be made for its accomplishment. We think that the same body who now elect the Jurats might elect a body of jurors, who would be familiar with both languages, and from their station not more obnoxious than the present Jurats to the other objections which have been suggested. The number of cases which would have come under the operation of a jury, during the ten years preceding our inquiry, does not exceed two hundred and fifty. Allowing for some increase from a more definite classification of crime and increased vigilance on the part of the Police, the number would still be far from large. A pannel of six and thirty jurors would, probably, give ample scope for occasional absence and the right of challenge: but there could be no difficulty in finding a much larger number. This would retain the choice of the judges of fact in the hands of the present electors of Jurats, a circumstance to which much importance is attached, from the notion that a choice exercised through the medium of the Douzaine is in effect a popular choice. Whether a choice so exercised is in truth a popular choice we need not here enquire: the feeling is one which it is important to encourage, and the more so as it must be conducive towards training up the inhabitants to a fuller sense of their rights and duties. If such a mode of obtaining a body of jurors were adopted, it might be expedient to attach some distinction to the office, which should make it an object of ambition, or at least compensate for the responsibility of its duties. Service by the party elected also should be compulsory, at least for a limited period. We see no reason why a body so constituted should not possess the confidence of the inhabitants to the same degree as the Jurats. It might also satisfy some doubts (in which however, we do not participate) if the foreman of every jury were a Jurat.

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We have next to offer some observations on the constitution of the Royal Court.

We have already stated that the twelve Jurats are usually chosen from the most ancient and respectable families in the Island. We believe them to be loyal and devoted subjects of Your Majesty, active and zealous in the discharge of their duty, and possessing, to a very considerable extent, the confidence of their countrymen. But we are compelled to state our decided opinion that most of what is objectionable in the system of criminal law which has grown up in Guernsey, and in the mode in which criminal justice is practically administered there, may be traced to the constitution of the Royal Court and the authority it exercises in its double capacity as a judicial and legislative body.

We have described at length the legislative functions of the Court sitting in Chefs Plaids. Powers so extensive and undefined appear to us inconsistent with the legislative powers exercised over the Bailiwick by Your Majesty in Council, and irreconcileable with anything like popular principles.

According to the theory of the Guernsey constitution, the Jurats may on one day, sitting in a Court of Chefs Plaids, make an Ordonnance without the consent of Your Majesty, against the will of the functionary representing the Crown in the Island, and without consulting the body of the States, and, on the next, sitting as a Court of Justice, may proceed to put their own construction on it and to execute the law of their own making, without their decision, in any matter of criminal law, being capable of review by any superior authority. It would be consistent with the due exercise of the legislative power that the States should frame laws for the Island subject to Your Majesty's concurrence. But it is contrary to the ordinary exercise of Your Majesty's high prerogative that the legislative power, which in Guernsey resides in the Crown, should be delegated to one of the three Estates of the Island so as to render that body capable of enacting laws without Your Majesty's concurrence. This power of the Royal Court in Guernsey could have had no legal origin except from a grant by the Sovereign. It seems to us doubtful whether it must not, from its nature, be referred to usurpation. But, at any rate, we submit to Your Majesty that it would more properly be confided to the whole body of the States, and that it ought not to be permitted to rest in the Royal Court.

This union of the judicial and legislative functions in the same individuals has been attended by the worst consequences in Guernsey. The enactment of the Commentaries of Terrien as law, in opposition as it would seem to the wishes of the people, is to be traced to the legislation of the Royal Court. The discretionary power assumed by the Court in the administration of the law has its origin in the same cause. This is increased by the nature of the tribunal. Men without legal education will not readily adopt a strict system of law, the administration of which can be only acquired by study and practice. The only justice, which a body so constituted is capable of administering, consists in an endeavour to deal with each case as it arises according to their notions of what is right in the particular instance. The restraining power of the Law Officers and the Bailiff is too feeble to withstand the prejudices or the passions of the Jurats. The consequence is, that the fate of those who are submitted to their jurisdiction often depends, not on the sentence of the law, but on the caprice of the Court.

Another objection arises from the mode of their appointment. We were told that it is the great privilege of the people of Guernsey to elect their own Judges. We think such a privilege very objectionable. It appears to us, that all judicial appointments should proceed directly from Your Majesty. But it is a mistake to assert that the Jurats are elected by the people of Guernsey. We have already pointed out to Your Majesty how small a share the people have in the constitution of the States of Election. The Jurats themselves form a considerable portion of this body; and their influence with the Douzeniers is so great that it is not often that a candidate obnoxious to them can have much chance of success.

Another objection arises from the political duties of the Jurats as members of the States. Party politics, or, more properly, faction, does not exist in Guernsey to the same extent as in Jersey; but it is impossible that questions of local politics should not sometimes occur of deep interest to the inhabitants. On such occasions they have a right to expect the active interference of the Jurats and the public expression of their opinions, as the leading members of the States of Election

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and Deliberation, and as gentlemen of family and fortune. Their judicial duties act in restraint of this, and render it unbecoming for them to take any part in such proceedings. The community are thus deprived of the full benefit of their services in one character or the other. The advantage of their assistance as leaders and guides is lost, or the part that they take in such discussions renders them unfit for their office as Judges. This disadvantage is aggravated by the narrow local limits within which their authority is exercised, and the violence with which local topics are discussed in a small community.

During our inquiry, instances of this were brought before us. Differences had unfortunately arisen between the Lieutenant Governor and the Royal Court touching the privileges of the latter. The particular points in dispute had been submitted to Your Majesty in Council for adjudication. The inhabitants naturally took a great interest in the question, and expressed strongly their feeling in support of what they considered the rights of the Royal Court and the ancient constitution of the Island. Pending the consideration of the case before the Privy Council, information was received of a supposed conspiracy, in which officers of one of the regiments of Militia were said to be implicated, to offer violence to the person of the Lieutenant Governor at a review which was expected. This produced an inquiry by Your Majesty's Government in England, which resulted in a direction from the Secretary of State for the prosecution of certain officers of the West Regiment of the Guernsey Militia for seditious language. In the interval, between the preliminary examination and the trial, a public meeting was called of the native and resident inhabitants of the Island, for the avowed purpose of adopting an address to Your Majesty, expressive of their devoted and unaltered loyalty to Your Majesty's person and Government. We were told that this had no reference to the charges then pending against the Militia officers, but that it was called exclusively to repudiate an imputation of general disloyalty, which a member of the House of Commons, in allusion to this charge, was reported to have thrown upon the inhabitants. This imputation, no doubt, was the immediate cause of the meeting: but, from the history of the dispute, it was impossible that the meeting could be otherwise than intimately connected with the imputation of conspiracy cast on the Militia, which was deeply resented by a large portion of the inhabitants of the Island. The resolutions passed at the meeting appear to us to confirm this view. The members of the Royal Court, after consulting together, determined, very properly, not to go to the meeting in a body. This completely shews the character of the meeting. There could be no impropriety in the Jurats attending a meeting for the mere purpose of expressing their loyalty to Your Majesty, and, apart from their character as Judges, there might be great propriety in their expressing their disbelief of the charges against the Militia. But there would have been the greatest indecency in the Court taking part in a meeting at which a criminal charge then pending before them might be the subject of discussion. Several of the Jurats, however, in their individual capacity, were present, and amongst them the late Mr. Guille, the then Bailiff of the Island. At the termination of the proceedings three cheers were given for the Royal Court, which were answered by the Bailiff proposing three cheers for the loyal Militia. Mr. Guille, we have no doubt, honestly thought that the stigma cast on the Militia was undeserved; and, in any other position, the public expression of such an opinion might have been in the highest degree commendable. But we can understand the chief Magistrate of the Island so far forgetting what was due to his judicial character, only on the supposition that his political character rendered it necessary that he should take part in the proceedings. The meeting was on the 2d of July; the trial took place on the 13th, when the accused were acquitted by the unanimous opinion of the Court. On looking at the printed report of the trial, we find the evidence so conflicting that we think no jury would have acted safely in pronouncing a verdict of guilty: but we must add that enough appears to convince us that the charge could not have been abandoned before trial without a gross dereliction of duty.

An incident, which occurred during the progress of the proceedings, may be noticed here. The Rev. Daniel Dobrée was a principal witness against one of the parties accused. At the investigation before the Cour du Quartier, he had given evidence, which his character as a clergyman rendered it difficult to discredit, and which, uncontradicted, would amount to proof of the charge. This, though taken at the secret sitting of the Court, had unfortunately been divulged, by whose fault it did not appear; but it became the topic of public talk; and threats were held out that he would be indicted for perjury, if he should persist

in the same evidence at the trial. His brother, Mr. Harry Dobrée, a Jurat of the Royal Court, thinking him mistaken, abstained from taking any part in the preliminary investigation; but, from a wish to save him from the threatened prosecution, after having, in vain, endeavoured to persuade him to quit the Island so as to avoid appearing as a witness at the trial, Mr. Harry Dobrée proposed that he should procure the signature of the Lieutenant Governor to a letter directing the Law Officers of the Crown to withdraw the prosecution, on the alleged ground that so many connections of the accused were among the witnesses for the Crown as to make it difficult to obtain a conviction. It is only by keeping in mind the peculiar nature of the tribunal that we can understand how a Judge could have permitted himself to make such a proposition to a witness, in a criminal trial of the greatest importance, then pending before the Court. We believe that Mr. Harry Dobrée was not aware that he was acting with impropriety, and that he was only desirous of rescuing his brother from what he believed to be impending disgrace. This, however, only proves how imperfectly the duties of a Judge may be understood by a Jurat of the Royal Court.

In another proceeding arising out of the same unfortunate transactions, we regret that we cannot altogether acquit the Court of partiality.

The Rev. Daniel Dobrée, whose name has been just mentioned, and who was Rector of the parishes of Torteval and the Forest, was charged with the infraction of an Ordonnance directing the mode in which notices of public meetings are to be published. The act charged against him was the taking from the frame, in which notices are directed to be deposited, a notice of a public parochial meeting to be held in his own parish church. We have read the Ordonnance with great attention, and cannot discover that it creates any such offence. The proposed meeting was for the purpose of forming a committee to unite with the other parishes of the Island in framing an address to Your Majesty, expressive of the loyalty of the inhabitants towards the person and government of Your Majesty, and at the same time to mark their disapprobation of the recent conduct of the Lieutenant Governor. Mr. Dobrée was a partizan of the Lieutenant Governor, and disapproved of the object of the meeting. Without his signature, as Rector, no meeting could be legally held for the purpose in the church. On his refusal to sign the notice, it was signed by the constables and placed in the frame on the Sunday immediately before divine service, the frame itself being placed inside the church, and not near the principal door on the outside, as the Ordonnance directs. But for the removal of this, as it appears to us, illegal notice from a place where it had been improperly placed, Mr. Dobrée was convicted and punished. It is impossible to avoid suspecting that his real offence in the eyes of the Jurats was the refusal of his sanction to the meeting. This was resented by the partizans of the Royal Court, whose members were thus unfortunately called upon to act as Judges in a matter too nearly affecting themselves to admit of their coming to an unprejudiced decision.

In submitting these remarks to Your Majesty, we are anxious, while we are endeavouring to bring to view the vices of the system, to avoid casting imputations upon individuals. When we consider the anomalous character of the Court, that its decisions in criminal matters are not capable of being questioned by Your Majesty in Council, and that, unlike the minor criminal tribunals in this country, it is not subjected to the control and supervision of Your Majesty's Court of Queen's Bench, we are surprised that powers so unlimited should be so little abused. We also believe that it would be difficult to select from the body of the inhabitants persons better qualified by station and character to discharge the duties intrusted to them, or more anxious to discharge them with propriety. The instances of irregularity adduced are intended to point out the evils which we believe to be incidental to the constitution of the Court, and the system of law it is called on to administer. It is natural that the Jurats should set a high value on privileges which they have so long enjoyed, and functions which have become hereditary in the families of many of them for many generations. Such feelings are entitled to every consideration and respect. But those gentlemen are too enlightened not to know that they hold these powers in trust for the benefit of the inhabitants: and we are convinced that no personal considerations on their part will interfere with their ready obedience to Your Majesty in the prosecution of such changes as Your Majesty shall be advised to effect.

We have next to suggest to Your Majesty such changes as appear to us best calculated to remedy the defects which we have pointed out in the constitution and

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practice of the Royal Court. The discharge of this part of our duty has been embarrassed by the difficulties incident to the attempt to frame a tribunal adapted to the circumstances of the Island, which shall not either be open to some of the objections which we have pointed out, or be altogether disproportionate to the amount of work which it will probably have to perform.

With regard to some of the alterations which we shall venture to suggest for the consideration of Your Majesty, we feel no doubt: others we recommend with great diffidence, being aware that they cannot fail to be distasteful to those who will be immediately affected by the change, and that they involve the abolition of what the inhabitants in general have been taught to regard (we think, erroneously) as their greatest privileges. The vices of the present system are, however, inherent in the institutions; and no mode suggests itself to us, by which the Tribunal of Bailiff and Jurats should be continued, which would not perpetuate the most objectionable of its characteristics. We are decidedly of opinion that the Judges ought to be lawyers, that they should receive their appointments direct from Your Majesty, and not from the election of the whole or any part of the community, above all that they should not be, as they now are, virtually self-elected. We think they should hold office quam diu se bene gesserint. We are also of opinion that Justice is better administered by a single Judge presiding at the trial of offenders, than by a Court composed of several Magistrates. The responsibility of the function in the former case is more deeply felt, and the uniformity of the proceedings more easily maintained. But we think it a great advantage, where circumstances admit of the formation of a Court of appeal from the decision of such Judge on any purely legal point. Such a Court necessitates the existence of at least three paid Judges, and presupposes business sufficient to find them employment. We have no doubt that judicial employment would be found for that number; but we think that the substitution of a Court so constituted would, for the present, meet with great opposition from the prejudices of the inhabitants, which would be increased if it should be necessary to provide for the expense of the Court by taxation.

One obvious defect in the existing Institutions, which, we fear, must continue to attach to whatever may be substituted for them, in the event of any change taking place, is the want of some superior Court capable, not only of reviewing their decisions, but also of controlling the administration of the local tribunal. The existence of such a power is a great check on the proceedings of the inferior Court, and tends to prevent that arbitrary action incidental to the exercise of authority which knows no control. In this point of view the periodical circuits of the Justices in Eyre were of the greatest utility; and we feel little doubt that the unpopularity, which is said to have attached to their proceedings, mainly arose from the controul that they exercised upon the irregularities of the Jurats.

In suggesting the changes which we think expedient, it is our desire not to interfere unnecessarily with existing institutions which long habit has rendered congenial to the inhabitants, and which their want of intercourse with other countries causes them to value, in our opinion, above their real worth. We are anxious not to offend even the prejudices of a people who are devotedly attached to Your Majesty's person and Government, who are for the most part satisfied with the existing state of things, and who do not feel the force of many of the objections which strike us as of the greatest moment. The Island does not as yet present the same party struggle which exists in Jersey. The population of Guernsey is much smaller, the influx of strangers less, the course of life more stagnant, the intelligence of the people less active, and their influence on the local government of the Island less direct. These causes present a reason for non-interference which does not exist in the former case, and induce us to suggest a remedy less complete than that which we have suggested in our First Report. We think, however, that certain alterations are imperatively required.

In the constitution of Guernsey, the political power resides almost exclusively in the same individuals who are intrusted with the administration of justice. The Bailiff and Jurats possess the legislative and, to a great extent, the executive power, as well as the judicial. So that it becomes impossible to propose any change in the constitution of the Royal Court, which shall not involve a considerable alteration of the political Institutions of the Island. We are thus compelled to propose changes which extend beyond a reform of the Criminal Law of Guernsey, and yet are necessarily suggested by the consideration of the constitution of the tribunals entrusted with its administration.

We recommend that legislation by the Court in Chefs Plaids should be entirely abolished. We suggest that the enactment of local laws, for the future, should be confided to the States of Deliberation with the assent of the Lieutenant Governor, as the representative of Your Majesty.

To render complete the separation of the legislative from the judicial functions, it will be necessary that the Jurats should no longer form a constituent part of the States of Deliberation. Such a change involves an alteration in the constitution of that body. We feel that we should exceed the limits of our commission by entering into a discussion of the mode in which this ought to be effected; but it is obvious that it would afford the opportunity of making the legislative assembly more immediately representative of the people than it has hitherto been. We recommend this change with greater confidence, because we find that our views with regard to the separation of the judicial from the legislative functions are shared by the more popular members of the States of Deliberation. We were led to suppose that the right of the Royal Court to make laws for the Island, in the Courts of Chefs Plaids, was a privilege highly valued by the inhabitants at large; and we expressed ourselves to this effect in our First Report. But a discussion of the question which has taken place since we left the Island shews us that we had greatly overrated the popular feeling in this respect. At the meeting of the States in January, 1847, a committee was named, to consist of a member chosen by each Douzaine of the Island, for the purpose of taking into consideration the reform of the civil laws, and to make their report to the States. We have been informed that, at a sitting of the Committee, at which ten members were present, the following resolution was carried by a majority of nine against one. "Le Comité est d'avis que les Etats doivent être reconnus comme le seul corps législatif et que la Cour Royale doit être limitée à l'administration de la loi."

We have already stated our opinion as to the change which should be introduced in the modes of bringing an offence under the cognizance of the Criminal Court.

We are of opinion that the Members of the Court who commit the prisoner for trial should in no case form part of the tribunal who try the fact of his guilt, or sit in judgment on his crime if he should be convicted.

We also think that the preliminary proceedings "*au secret*" and the interrogatoire of the accused should be abolished. Instead of the present proceedings, we suggest that in ordinary cases the witnesses against a party charged with crime should, before his committal, give their evidence on oath, in open Court, in his presence; and that written depositions should be taken of their evidence. That the accused, after hearing the evidence, should be at liberty, but should not be required, to make any statement, which should also be reduced to writing, and be evidence against him, if the Crown Officers should think it material at the trial. We suggest that periodical Sessions should be fixed at which the trials should take place; that copies of the depositions should be furnished to the Law Officers of the Crown to enable them to prepare the mise en accusation; and that, at a stated time before the Sessions at which he is to be tried, the prisoner should be furnished with copies of the mise en accusation and of the depositions taken before the committing Court. The Law Officers should have the power of quashing the proceedings at any step, subject to their being resumed by the direction of the Court, as hereafter specified.

We are of opinion that the Procès au Grand Criminel should be at once abolished. In its stead we suggest that the plea of the prisoner should be taken at the trial: that, in the event of his pleading Guilty, the Law Officers of the Crown should pray the judgment of the Court, and sentence should be passed by the presiding Judge. That, in the event of his pleading Not Guilty, the proceedings should commence by the Law Officers of the Crown stating to the Court the case they propose to prove against him. That the witnesses in support of the prosecution should then be called and examined vivâ voce in chief by the Law Officers of the Crown, and cross-examined by the Advocate for the prisoner. That the depositions taken before the committing Court should not, on the trial, be evidence of the facts deposed to, except in case of the death, before the trial, of a party whose depositions had been taken, but that either party should be at liberty to produce them as evidence of what the witness had said before the committing Court, if that should become material. That, after the witnesses for the prosecution have been all heard, the Advocate for the prisoner should be heard for the defence, and, if he should produce witnesses, then the Law Officers of the Crown should be heard in reply, and the Advocate for the prisoner again upon the whole case.

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We have found great difficulty, from the reasons before assigned, in proposing a Tribunal for the trial of crime in Guernsey. We think that a Court consisting of a single Judge, with a tribunal, between him and the party charged, to find the fact of guilt, possesses advantages which do not belong to any other mode of criminal trial hitherto devised; and we should regret exceedingly if the limited size of the Island, or the peculiar state of society in Guernsey, should render its inhabitants incapable of participating in so great a benefit. With this view, we suggest that all trials for crime and serious misdemeanours should take place before the Bailiff, or a Lieutenant Bailiff, as sole Judge, with a jury composed of one Jurat for foreman and a certain number of Jurors to be elected in the mode already suggested. The number of Jurors, with the Jurat, should be six, twelve, eighteen, or twenty four; and the concurrence of five sixths of the number should be necessary to a conviction. We recommend that the presiding Judge should decide all questions of law arising during the proceedings, whether as to the form or substance of the accusation, or on points of evidence, and that he should also sum up the facts to the Jury, directing them as to the law, so far as it may be affected by the view they take of the facts proved, and leaving to them the question of the guilt of the prisoner.

In order to carry out this change, it will be necessary to withdraw the Bailiff from the committing Court. With this view we propose that the Crown should appoint an Officer, to be called the Vice Bailiff, who should sit daily for the purpose of hearing Police charges, before whom all parties charged with crime should, in the first instance, be brought, and whose duty it should be, when the charge was of a character to be submitted to a Jury, to take the depositions of the witnesses and commit the accused for trial. We think that this Officer should also have the power of taking bail for the appearance of the accused in certain cases, and of committing him for further examination if circumstances required it, and also of dismissing the charge. We also think that the Police of the Island should be placed under his control, and that the Constables should report to him daily all offences, obey his warrants, and act under his directions.

We propose, also, that cases which fall within the summary jurisdiction of the Court should be tried by the Vice Bailiff and two Jurats, and that such Court should hold its sittings on the same days as those on which the Cour du Quartier now sits, and possess the same jurisdiction in criminal matters as that Court has in similar cases, provided only that the proceedings preliminary to the committal of any prisoner for trial should take place before the Vice Bailiff alone, in the manner before stated. We think that, in such cases, an appeal should lie from this Court to the Court of Three hereafter described, on the appellant entering into security for the costs.

We also think that the Bailiff, the Vice Bailiff, and all the Jurats, should be constituted Justices of the Peace, in order to give them jurisdiction under certain Acts of Parliament in force in Guernsey, requiring certain acts to be done before a Justice of the Peace, such officer being unknown in the Island. We suggest that the Vice Bailiff should also be capable of performing any of the functions of the Bailiff, whether of a Civil or Criminal nature, which are purely ministerial.

We recommend that the Bailiff should in future hold office quamdiu se benè gesserit, and not during pleasure. That he should be the Chief Criminal Judge of the Island, capable of presiding in either Court, and should take full notes as is done in England; provided always that, in the event of his acting on the committal of an offender, he should not be competent to sit as Judge at the trial. We also propose that he should retain the power he now possesses of appointing, from among the Jurats, a Lieutenant Bailiff, who should be capable of acting as Judge on the trial of offenders before the superior Court, or as President of the inferior Court, in the absence of the Bailiff or the Vice Bailiff, and, generally, of doing all acts connected with the administration of Criminal Justice, which belong to the office of Bailiff or Vice Bailiff. The Three should, we think, form a Supreme Court, sitting at fixed periods, before whom may be brought any questions of law, by way of appeal from the Court that tries either summarily or with a Jury, and which also should have power to order new trials where there has been a misdirection or failure of justice, and to award criminal process, where the Police Court has refused to do so, or where the Law Officers have quashed the proceedings. This Court should also have a general jurisdiction over the Criminal practice, analogous to that possessed by the Court of Queen's Bench.

We think that the Jurats should be Conservators of the Peace, and have the power of committing parties for breach of the peace, and of issuing warrants for

the apprehension of parties charged with crime upon information being given before them on oath; and that Constables and Peace Officers should be bound to obey their lawful warrants.

We think that the Constables and other Peace Officers should have authority to apprehend, without warrant, persons committing a breach of the peace in their presence, and all persons upon a charge of crime upon a warrant made in any of the cases which will arise under the different modes of bringing forward a charge; and that they should be bound to bring such persons before the Police Court with the least possible delay, together with the witnesses in support of the charge.

We have now stated our views with regard to the changes which appear to us necessary in the administration of the Criminal Law in Guernsey. There are some minor points which are common to the laws of both Islands, which have been already noticed in our First Report, to which we beg leave to refer, and which it will be unnecessary now to recapitulate.

Some other suggestions, which have found no place in the preceding part of this Report, we will make here.

We submit that the penalty of confiscation ought no longer to be attached to conviction. It is very rarely indeed that the Crown would seriously lose by the change: but the more common effect is to make innocent parties suffer a loss, which presses heavily on poor persons, merely from the crime of a relation.

We think that some regulations should be framed for the admission of Advocates properly qualified; that the number should not be limited; and that the Court should have no discretion beyond that of judging of their qualifications.

We think that it would promote the advancement of justice if the Imperial Legislature were to frame a measure enabling the Courts of Guernsey to bring before them accused parties, and witnesses, from any part of Your Majesty's dominions.

If the accused be found guilty, he is amerced in costs: but, if he be acquitted, he receives none. This inequality ought, we think, to be put an end to.

The power of the Court as to offences committed at sea is undefined; and, as in the case of Jersey, it seems fit that the Imperial Legislature should settle the point.

The use of English is much less general in Guernsey than in Jersey. We were informed that the town population comprizes about two fifths of the whole inhabitants, and the country population the remainder. That in the town the use of English prevails as the language of business and ordinary intercourse, but that among the country population French is in general use, and English not understood, even by the members of the country Douzaines. On a late occasion, when one of the Deputies from the town Douzaine was proceeding to address the States in English, an objection was made by some of the Deputies from the country parishes, not only on the ground that French was the recognised language of the States, but also because they did not understand English. In Alderney and Sark, also, English is very little spoken. We may also add that the classification of offenders brought before the Royal Court in the ten years immediately preceding our inquiry shews that the number of the natives of the Channel Islands who have been subjected to the Criminal Law in Guernsey exceeds that of the English, Irish and Scotch. It is, however, probable that a few years will make a considerable difference with regard to the English language. We were informed that in the country parishes, among the rising generation, English is understood almost as well as French, and that instruction in it is common in the country parochial Schools. We think that it would be right to authorize the Court, at its discretion, and on the application of the counsel for the accused, to direct that the proceedings should be in English. This must, of course, precede the selection of the Jury.

The Court which tries should have the power to amend the Act of accusation in any matter not essential to the merits.

We recommend the total abolition of the Causes en Adjonction, on the grounds

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stated in our First Report. In this recommendation, we believe that we have the unanimous concurrence of the Bar. A civil and criminal proceeding should each be allowed separately, if a private or public wrong be committed.

A question was raised before us as to the right of the Governor to be present at the sittings of the Court au sécret. It arose out of certain proceedings of the Royal Court, of the 21st of November, 1845, on the present Lieutenant Governor claiming that right. The Court, after hearing the Law Officers of the Crown, came to the unanimous decision that "the Lieutenant Governor has no right to be present at the judicial secret sittings of the Court (*aux séances judiciares dans le particulier de la Cour*); such claim not being founded in right, and being contrary to the laws and customs established in the Island." We understood the claim to rest on the exercise of the right, as well as on a passage (p. 35.) in Warburton's "Treatise on the History, Laws and Customs of the Island of Guernsey," supported by an extract from a Commission of the 6th of Queen Elizabeth, which, in terms, orders "the presence of the Governor, at all Courts kept or holden within the Isle." We were informed that it was considered by the Court that the main body of the Commission was intended to be in force for three years only, and that the particular clause was intended to have a temporary effect. We had not sufficient materials before us to enable us to form a decided opinion on the subject: but it appears, from one of the petitions presented to the Commissioners in the reign of James the First, that, at that time, the Governor exercised the right of being present at the judicial sittings of the Court without dispute. The prayer of the petitioners is, that, "whensoever any cause shall be pleaded in Court, whereof under his Majesty's prerogative the Governor shall expect some profit, the said Governor and his Lieutenant be required to depart out of the Court, as long as their interest shall be pleaded, and until it be fully tried and judged, leaving the matter to the care and diligence of his Majesty's officers to be debated, and to the integrity of the justices to be decided." Assuming the right of the Governor to be present at the ordinary judicial sittings of the Court, we cannot understand on what principle he can be excluded from the preliminary investigation. Many circumstances might occur to render his presence desirable at the latter; while no reason presents itself for his presence when the functions of the Court are purely judicial. The point is not of great importance: but, as it has arisen, it is proper that it should be determined one way or the other.

We now proceed to describe the Criminal Tribunal of the Island of Alderney.

The Court in Alderney consists of a President, called the Judge, and six Jurats, two Crown Officers called, as in Guernsey, the Procureur and Contrôle, the Greffier and the Prévôt.

The Judge receives his appointment from Your Majesty. The six Jurats are elected for life by the rate-payers of the Island: if, from infirmity, they desire to resign, they apply to the States of Alderney, who transmit the application to the Royal Court of Guernsey, which decides upon it. The Procureur, Contrôle and Greffier also receive their appointments from the Crown. The Prevôt is an officer named by the States of the Island: he formerly held office for a year only; but, within the last four or five years, the Alderney Court of Chefs Plaids have passed an Ordonnance making the office perpetual. The Prévôté consists of twelve persons. These serve for twelve years, if they live so long: but, in case of death, the place is filled up. The twelve hold, in rotation, the office of Deputy Prévôt for one year.

There are also two Constables and two Deputy Constables, chosen by the Court. They are annual officers, the two who have been chosen as Deputy Constables for one year becoming Constables for the year following.

The Procureur has an annual salary of 40*l*. The Contrôle has no salary; and that office at present is not filled up, the Procureur being the only Advocate in the Island.

The jurisdiction of the Court of Alderney, in matters of a criminal nature, is confined to a preliminary investigation into the fact of crime. It may examine, and, if satisfied that the charge is without foundation, may dismiss the complaint; but it possesses no power of trial or punishment. When an offence is committed in Alderney, the party charged is apprehended by the Constable, and brought before the Judge and at least two Jurats. The witnesses are examined, and the interrogatoire of the prisoner taken by the Court. The examinations are then reduced to writing; and, if the Court is of opinion that there is sufficient evidence to put the prisoner on

his trial, an Acte of Court is made referring the matter to the Royal Court in Guernsey. This mode of proceeding is provided by an Order in Council of the 21st of June, 1585, which directs that the Jurats of Alderney "shall refer Criminal Causes to the Royal Court as was always the custom." The prisoner is committed to the custody of the Prévôt of Alderney, whose duty it is to convey him to Guernsey. On the arrival of the Prévôt in Guernsey with his prisoner, he apprizes the Bailiff, and delivers to him or to one of the Law Officers of the Crown a copy of the Acte of the Alderney Court, together with copies of the examination of the witnesses and the interrogatoire of the accused. The Bailiff thereupon convenes a Cour Ordinaire, at which the interrogatoire and the depositions are examined: and, if the Court should think the offence of a nature to be tried, and the evidence, as taken by the Court in Alderney, sufficient, an order is made for the witnesses to be sent from Alderney on a particular day. On their arrival, they appear before the Cour du Quartier; and the proceedings are commenced from the beginning, exactly as if the offence had been committed in Guernsey.

As there is no prison in Alderney, the prisoner remains in the personal custody of the Prévôt until his committal for trial in Guernsey. This renders the office of Prévôt very onerous.

The Court of Alderney also has the power of making local Ordonnances, in the nature of police regulations, and for the repair and maintenance of the highways, obedience being enforced by a fine. The Ordonnances must be made either at a Court of Chefs Plaids or at a meeting of the States. These are constituted of the same members: but the States meet whenever there is occasion; the Chefs Plaids only twice in the year, on the first Monday after Michaelmas and the first Monday after the 15th of January. The body consists of the Judge, the six Jurats, the Crown Officers and the Douzaine, which last is a body of twelve elected by the rate-payers of the Island, for life, or until they obtain permission, for infirmity, to be discharged. The Governor also has the right of being present; and, when he cannot attend in person, he deputes some one who takes the oaths as Lieutenant Governor for the occasion.

The Constables in Alderney are mere Officers of Police, and have no place in the Court sitting in Chefs Plaids, nor in the States.

The Judge, and at least two Jurats and seven Douzeniers, with one of the Crown Officers, must be present to constitute the Court. The enacting power resides with the Jurats alone, the Bailiff, in case of an equality of numbers, giving a casting vote. The Crown Officers and the members of the Douzaine are, however, both consulted. The course is, upon a measure being proposed, for the Judge, first, to ask the opinions of the Crown Officers. After they have been heard, the opinion of the Douzaine is asked through the President, who is the senior member; after which the Jurats decide on the proposition, which thereupon becomes law, and is binding on the inhabitants of Alderney.

An appeal against its enactment lies to the Royal Court in Guernsey, which has power to annul an Ordonnance of the Court of Alderney. It is however contended, in Alderney, that the Guernsey Court has no power to make an Ordonnance binding on the inhabitants of Alderney, and that no one can be summoned before it for the breach of an Ordonnance made by the Court in Alderney, the jurisdiction of the Guernsey Court in such case being only appellate.

Besides the making of Ordonnances, the taxes for the relief of the poor are raised, and the value of the wheat rents for the year are fixed, at the Court of Chefs Plaids.

Great inconvenience is felt in Alderney from the want of power on the part of the Court to punish petty offences. At present this is met by giving the party accused the option of submitting to the Court instead of having his case remitted to Guernsey for the decision of the Royal Court there; in the event of his submission a small fine or short imprisonment is inflicted.

The population of Alderney at the last census, in 1841, amounted to 1030. We were informed that it has not been on the increase since then, and that the quiet and orderly habits of the natives give little cause for the exercise of summary jurisdiction by the Court. Since our return to England, however, a great augmentation of the population has taken place by the influx into the Island of workmen who are employed in the public works directed to be executed there. We have received a communication from Mr. Gaudion, the Judge of Alderney, pointing out the necessity of further powers being extended to the Court, in order to meet the altered state of the Island.

We think that this deserves attention. We suggest that a summary jurisdiction

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should be conferred on the Judge and two Jurats of Alderney, in cases of assault, breach of the peace, and disorderly conduct, with powers to punish by the infliction of a fine not exceeding twenty livres tournois, and imprisonment not exceeding twenty days. The Judge should have power to name a deputy; and the fine and imprisonment should, where it is thought fit, be both inflicted.

We further suggest that the Causes en Adjonction, which exist here, should be abolished.

And, further, that the authority of the Royal Court of Guernsey over the Island of Alderney should be defined by an Order of Council.

If our suggestion as to the legislation in Guernsey by the States of Deliberation be adopted, it seems fit that Alderney should be represented in that assembly. But the Alderney States should still, we think, retain the right of local taxation.

The Island of Sark was granted by letters patent, in the reign of Queen Elizabeth, to Hilary De Carteret, Lord of St. Ouen's, in Jersey, to hold by the twentieth part of a knight's service. The inhabitants, soon after the grant, proceeded to elect from among themselves a Bailiff and twelve Jurats, in imitation of the Court in Jersey. This was regarded as an usurpation by Sir Thomas Leighton, the then Governor of Guernsey: and proceedings were taken in the Royal Court of Guernsey, in the year 1582, upon the information of the Procureur de la Reine, under which Edward de Carteret, the Bailiff elect of the Island, and two of the self-elected Jurats were imprisoned; and the Island was seized, in the name of the Queen, as forfeited by the usurpation. But afterwards an Order in Council was made, on the 24th of April, 1583, establishing five Jurats in Sark, to be chosen by the inhabitants, "the eldest of the said Jurats to give sentence as is used in Alderney," and "the Jurats to adopt pleas and use jurisdiction in Sark, in all cases, as is used in Alderney, and appeals likewise to be from Sark to Guernsey, as to the superior Justice, in all causes as is used in Alderney." The same Order appoints a Greffier, and also a Prévôt to plead the Queen's causes as Procureur, and to arrest as Prévôt, and to adjourn (that is, to summon) and distrain as Serjeant; and a Constable and Vingtenier to be chosen by the inhabitants of the Island, and there to execute their offices in like manner as the like officers in Alderney.

The jurisdiction of the Court, so constituted in obedience to the Order, in criminal matters, was thus defined by the Governor and members and officers of the Royal Court, Guernsey. "*Jugeront les susdits Jurez,*" "*de toutes matières et actions de Forfaite, Excez, et Injures, par emprisonnements, ou amendes n'excédant la somme de soixante sols et un denier Tournois, pourvu qu'il n'y ait matière de crimes, auxquels cas les dits Jurez seront tenus envoyer, par le Prévôt de la dite Isle, leurs corps avec la cause, à la Justice de Sa Majesté en la dite Isle de Guernesey, pour y procéder, comme sera expédient.*"

The Jurats were also authorized to assemble about the next Wednesday after the 29th of September, the next Wednesday after the 15th of January, and the next Wednesday after Easter day, in every year, to hold their Chefs Plaids The power of making Ordonnances is given them in the following terms. "*Les dits Jurez et Officiers, par le consent du Seigneur de la dite Isle et de la généralité des habitants, feront telles Ordonnances qu'ils trouveront expédients et nécessaires de tems en tems pour le réglement de la Police de la dite Isle.*"

This jurisdiction continued in the Jurats of Sark till the year 1672, when the Jurats were displaced by an Order in Council, in consequence of their refusal to take the Oath of Supremacy. It was thereupon ordered that the Royal Court of Guernsey should name a Seneschal. But a subsequent Order in Council, of the 19th of May, 1675, directed that the Lord of Sark should name the Seneschal and the other officers of Justice there, who should take the oath before the Royal Court, at Guernsey. This course has since continued to be followed.

At present the Court at Sark consists of the Seneschal or his Deputy, who is the Judge of the Court; the Prévôt, who acts in the threefold character of Procureur, Serjeant and Prévôt; and the Greffier. These Officers are all appointed by the Lord, and sworn in before the Royal Court in Guernsey.

The Seneschal of Sark has complete jurisdiction in the case of petty offences, having the power of punishing by way of fine to the amount of three livres tournois, and by imprisonment to the extent of three times twenty four hours. In all cases which require a severer punishment, he is bound to send the case before the Royal Court in Guernsey.

The Island is divided into forty tenements held of the Lord, which, by letters patent of the 9th of James the First, were made incapable of partition. The holders of the forty tenements, with the Lord, the Seneschal, the Prévôt and the Greffier, now constitute the Court of Chefs Plaids in Sark. The Lord must be present in person, or by some one authorized to appear for him. The Seneschal or his Deputy presides. No one has a vote at the Chefs Plaids who is not a tenant.

Ordonnances are passed there for roads; and rates are imposed for the maintenance of the poor and other purposes of local taxation and police. After the project has been discussed and adopted by the votes of the majority of the tenants, the Seneschal requests the assent of the Lord to its enactment. If it is given, the Ordonnance is registered, and has immediately the force of law. If, on the contrary, the Lord withholds his consent, no registration takes place; but the majority of the tenants may appeal to the Royal Court of Guernsey, who claim the right of compelling the registration of the Ordonnance, and thus giving it the force of law. There seems reason for doubting whether this power resides in the Royal Court; as it is denied that the Royal Court sitting in Chefs Plaids can make an Ordonnance to bind the inhabitants of Sark. It is, however, not disputed that it possesses the power of reviewing Ordonnances made by the Court of Sark, and annulling those which are contrary to a known superior law.

The Chefs Plaids also appoint two police officers, namely a constable and a vingtenier. Each office is held for a year, the vingtenier of one year becoming the constable of the year following.

The population of the Island at the last census, 1841, was 790. It was represented to us as being less now, by about one hundred. In summer, there is a daily intercourse between Sark and Guernsey; and, in winter, at least once a week.

Crime, of any kind, is extremely rare in the Island. We were informed that there had not been a criminal case before the Court for the two years preceding our Inquiry.

The Causes en Adjonction exist here also; and here, as in the other Islands, we recommend their abolition.

We think that it would be expedient to settle, by an Order in Council, the exact limits of the authority of the Royal Court of Guernsey over the Island of Sark.

And, as in the case of Alderney, it appears fit to consider whether Sark ought not to be represented in the Guernsey States of Deliberation, should the proposed transfer of the power of legislation to that Assembly take effect. The right to impose local taxes should still, we think, remain with the Chefs Plaids in Sark.

At the conclusion of this Report, we must avow that we entertain little expectation that the suggestions, which we have felt ourselves bound to offer, will be received with anything like a general acquiescence by the inhabitants of Guernsey and its dependencies. We, therefore, venture to advise that the changes which we recommend be not carried into effect until our recommendations shall have become generally known, and until full time and opportunity shall have been offered for making such objections as the inhabitants may think proper to submit to your Majesty. We urge this, not merely in consideration of their strong and constant attachment to the Crown, but also because it is important to know how far the reasons which we have assigned for changes can be either wholly impugned or materially qualified, and because, even where this cannot be done, any dislike to a change, entertained by those who are to be affected by it, must, as a fact in itself, and without reference to its justice or injustice, be an important element in the determination of the course to be pursued. We are convinced that, in many instances, the repugnance to the adoption of our recommendations will be found to be much stronger than could be inferred from the evidence given before us. It is not likely to be lessened by the circumstance that the recommendations come from persons educated in a system so essentially differing from that on which they are required to pronounce an opinion.

If it should be thought right, in compliance with such a feeling of dislike, to preserve more of the ancient system than would be left by the alterations which we have proposed, it appears to us that this may be best done by allowing some Jurats to sit jointly, both with the Judge who tries the causes, and with the Court of Three. We, of course, think that such a modification would render the change less useful; but it may render it more acceptable.

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It very seldom happens that institutions can be so modelled as fully to carry sound general principles into effect, and at the same time to satisfy entirely those who are the subjects of the institutions. When the incompatibility becomes very great in the particular case, the governing power has before it a problem than which there are few more difficult or more important. All that can be done is to approximate to its solution, by determining how far one of these conflicting considerations is to controul the other. Our duty here is simply to offer such materials as our inquiries have enabled us, after long and anxious deliberation, to collect and arrange: and we now humbly leave them in your Majesty's hands.

THOMAS FLOWER ELLIS. (L.S.)
THOMAS BROS. (L.S.)

(Circular.)

*Office of the Channel Islands, Criminal Law Commission,*
10, *King's Bench Walk, Temple.*

1846.

Sir,

I am directed by the Commissioners for inquiring into the Criminal Laws of the Channel Islands, to send you a copy of their Commission, from which you will learn, generally, the objects of the Commission, and the proposed subjects of inquiry.

I am further directed to inform you that it is the intention of the Commissioners to visit the Channel Islands at a future stage of the inquiry. Before doing so, they wish to be put in possession of information as full and accurate as can be obtained by written communications. They propose, therefore, to forward to those most likely to be conversant with the Criminal Law of the Channel Islands a series of questions. The first set of the series accompanies this communication; and the remainder will be sent with as little delay as possible.

I have to request your earliest attention to the questions now sent, especially as the Commissioners hope that the information furnished to them in answer to each set of questions will materially assist them in framing those which are to follow. You will perceive, therefore, that the value of any assistance you may afford to the Commissioners will be much increased by their receiving it early.

I have to request that you will be so good as to send your answers to me to the above address.

I am, Sir,

Your obedient humble Servant,

Charles Clark,

*Secretary to the Commission.*

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(Inclosed with the above.)

VICTORIA by the grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith. To Our trusty and well beloved Thomas Flower Ellis Esquire Barrister at Law and Thomas Bros Esquire Barrister at Law Greeting:

WHEREAS We have deemed it expedient for divers good reasons and considerations that a Commission should forthwith issue for inquiring into the Criminal Laws now in force in Our Channel Islands and into the constitutions and powers of the Tribunals and Authorities charged with the execution of such Laws. Now know ye that We having especial trust and confidence in your wisdom and fidelity have assigned nominated and appointed and do by these presents assign nominate and appoint you the said Thomas Flower Ellis and Thomas Bros to be Our Commissioners to go into our said islands for the purposes aforesaid. And for the better effecting the purposes of this Our Commission, We do by these presents give and grant to you or any one of you full power and authority to call before you or any one of you such persons as you shall judge necessary by whom you may be the better informed on the subject of this Our Commission and of every matter connected therewith. And also to call for have access to and examine all

such Official Books Documents Papers and Records as may afford the fullest information on the subject and to inquire of and concerning the premises by all other lawful ways and means whatsoever. And We do hereby give and grant to you or any one of you full power and authority where the same shall appear to be requisite to administer an Oath or Oaths to any person or persons whatsoever to be examined before you or any one of you touching or concerning the premises. And our further will and pleasure is, that you do and shall with as little delay as possible report to Us in Our Privy Council under your hands and seals respectively your several Proceedings by virtue of this Our Commission as the same shall be respectively completed and perfected. And We will and command and by these presents ordain that this Our Commission shall continue in full force and virtue and that you Our said Commissioners or any one of you may from time to time proceed in the execution thereof and of every matter and thing therein contained although the same be not continued from time to time by adjournment. And We do hereby require all and every Our Officers and Ministers in Our said Islands respectively to be aiding and assisting to you and each of you in the due execution of this Our Commission. And We have made choice of Our trusty and well-beloved CHARLES CLARK Esquire Barrister at Law to be Secretary to this Our Commission and to attend you in the execution thereof whose service and assistance We require you to use from time to time as occasion may require. In witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster the Sixteenth day of May in the ninth year of Our Reign.

By Writ of Privy Seal.

EDMUNDS.

# COMMISSION APPOINTED TO INQUIRE INTO THE STATE OF THE CRIMINAL LAW IN THE CHANNEL ISLANDS.

*Office of the Commission,*
10, *King's Bench Walk, Temple.*

## QUESTIONS PROPOSED BY THE COMMISSIONERS.

### Series No 1.

Questions.
Series No. 1

1. Will you state what opportunities you have had of becoming acquainted with the criminal law of ?

2. What tribunals exercise criminal jurisdiction in that island? How has their jurisdiction originated, and over what offences does it extend?

3. What are the authorities principally relied upon in the discussion of questions arising upon the criminal law?

4. When it is suspected that a party has committed an offence, what is the step first taken for the purpose of bringing him to justice?

5. Does the Court or officer before whom the accused is brought, in any, and, if so, in what cases, exercise a summary jurisdiction?

6. Where there is no exercise of summary jurisdiction, what preliminary proceedings take place before the accused party is put upon his trial? What steps are taken for securing his appearance before the Court which ultimately takes cognizance of the offence?

7. Where the jurisdiction is not of a summary kind, before what Court is he tried? How is the Court constituted? Are the functionaries who have sent the party to trial capable of acting as members of such Court?

8. By whom are the proceedings against the accused party instituted? What power has any functionary, at any and what stages, of causing the proceedings to be abandoned? What effect has such an abandonment upon future accusations?

9. At what stage, if any, is the charge against the party accused put into a definite form, written or otherwise? How far is it competent to the accuser to vary the form or substance of the charge? And, if at all, at what stage or stages may this be done? And, when this is done, what power has the party accused of remodelling or otherwise improving his defence?

10. What is the form of proceeding, if the party charged admits the facts alleged against him, but denies their relevancy to support the charge?

11. What is the form of proceeding, if the party charged simply denies the facts alleged against him?

12. If the party charged confines himself to a denial of the relevancy of the charges, is he thereby concluded as to the facts?

13. If the party charged confines himself to a denial of the facts, is he thereby concluded as to their relevancy?

14. Is the party charged entitled to the assistance of counsel and other legal advisers? If so, of how many? By whom are the advisers selected? Where the party accused is unable to defray the expenses of legal assistance, has he any and what means of obtaining it?

15. What means has either the accusing or accused party of compelling the production of evidence, oral or documentary, at any and what stages of the proceedings?

16. At what stage in the above series of proceedings is evidence first received? And in what mode and in whose presence is it taken?

17. When is the party accused allowed to hear the evidence produced against him?

18. When is the party accused allowed to produce evidence to meet the evidence produced against him?

19. When, and to what extent, respectively, is the party accused allowed to question the witnesses produced against him?

20. Is there any and what stage, earlier than the actual judgment, after which fresh evidence may not be produced, either for or against the party accused?

21. How much of the evidence received at the respective stages of the proceeding is taken down in writing?

22. How is the evidence which is taken down in writing afterwards used? Is it allowable, either against or on behalf of the accused party, to give proof that the written evidence does not correctly represent the whole of what was deposed to? If there are any distinctions in this

Questions.

respect between evidence taken at one stage of the proceedings and evidence taken at another, be pleased to point them out.

23. What are the privileges of the counsel of the party charged, as to being heard on questions of fact or law, and examining witnesses?

24. Has the party accusing or the party accused the privilege of being heard first?

25. What are the functionaries deciding the law, and what the functionaries deciding the fact?

26. By whom is judgment awarded?

27. Has the Court the power to adjourn or suspend its proceedings at any and what stages, and for what cause or causes?

28. Be pleased to detail, as circumstantially as possible, the incidents to accusation and trial, so far as they may not have been brought forward by the answers to the preceding questions.

29. What power of appeal has either the accusing or accused party in any and what forms of criminal proceeding? If any, be pleased to detail the incidents to bringing and deciding upon the appeal, following, as nearly as possible, the course indicated by the preceding questions.

30. If judgment be finally against the accused party, what are the steps taken to carry it into effect?

31. Be pleased, as far as it is in your power, to furnish the Commissioners with the forms used at the various steps of the proceedings which are the subject of the preceding questions: and state the oaths, if any, taken by the witnesses and the members of the Court respectively.

32. What are the modes of appointing the several functionaries mentioned in the answers to the above questions? For what length of time do they officiate? How, if at all, are they removable?

33. You are requested to give any information, not already disclosed by the answers to the preceding questions, respecting the criminal law of , which may appear to you important for the purposes of the commission.

34. You are requested to point out any defects which appear to you to exist in the present system, and to suggest such improvements as may occur to you.

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Series No. 2.

## Series No. 2.

1. Is there any and what age before which a person is not considered responsible to the criminal law? Is there any distinction in this respect between different offences?

2. What course is pursued if, at any stage of a criminal proceeding, it appears that the party charged was of unsound mind at the time of the offence? What is considered to be the test of such unsoundness of mind as to prevent a party from being responsible to the criminal law?

3. Are there any and what cases in which a married woman is considered not to be responsible to the criminal law?

4. Is there any case in which a party, otherwise responsible to the criminal law, is relieved from such responsibility by having acted under the control of another party?

5. When a party is charged with an offence, what is the result if it appear that he was

(1) Not the actual perpetrator, but present at the time of the offence, and assisting the actual perpetrator by counsel, watching, or otherwise?

(2) Not present, but that he instigated or assisted, by counsel or otherwise, the actual perpetrator, before the time of the perpetration?

(3) Not present, but that he, after the perpetration, assisted, by counsel or otherwise, the actual perpetrator

(firstly) in attaining the end aimed at (as, for instance, by disposing of property stolen) by the actual perpetrator?

(secondly) in escaping from justice?

6. In the several cases supposed in the last question, can the party so instigating or assisting, be charged with the principal offence? Is he in any, and what, cases chargeable with a specific crime as a participator in the perpetration of the principal offence?

7. In the several cases above suggested, can the party participating be charged alone, or must he be charged together with the actual perpetrator? If he can be charged alone, is it necessary that the actual perpetrator should have been convicted previously?

8. Is there any and what distinction, in this respect, as to different offences?

9. In the cases severally contemplated in the fourth and following questions, what is considered to be legally the limit of actual or constructive presence?

10. Can more than one person be charged in a single prosecution? If so, what takes place if that which is charged as a joint offence is proved to have been an offence in which one of the accused parties did not participate?

11. May different offences be charged in a single prosecution against the same party? If so, may an offence committed by the party alone be charged in the same prosecution with one committed by him jointly with another person?

Questions.

12. Is there any, and what, limitation as to the time, reckoned from the commission of an offence, within which a prosecution must be instituted? Is there any, and what, distinction in this respect, between different offences?

13. In what place or places must an offence have been committed in order to subject the offender to a prosecution by the criminal law of ?

14. Is there any, and what, distinction, with respect to apprehension, trial, or punishment, or any of the incidents thereto respectively, between offences committed in different places within the territory subject to the criminal law of ?

15. Does the law of recognise any classification of offences with respect either to the punishment to which they subject offenders, or the incidents of procedure and trial? If so, what is the technical nomenclature by which the different classes are respectively designated.

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Series No. 3.

Series No. 3.

1. When a witness is produced against or for a party charged with an offence, must the evidence be given by the witness in the presence and hearing of the prosecutor and accused party, and of the tribunal which has to decide on the charge? Is there any and what difference made, in this respect, at different stages of the proceedings?

2. Is the evidence of such a witness given in writing, either by way of statement or in answer to written interrogatories, or orally, on questions put to him at the time on the part of the prosecution and of the party charged? Is there any, and what, difference made in this respect at different stages of the proceedings?

3. Is it required by the law of that all evidence relating to a criminal charge shall be given under sanction of the oath of the witness? Is there any, and what difference made in this respect at different stages of the proceedings?

4. Is there any, and if so what, age before which a person cannot give evidence?

5. Can a person be excluded from giving evidence, for or against a party charged with an offence, on the ground of want of religious belief?

6. Does conviction of any, and if so of what, crimes render a person incompetent as a witness for or against a party charged with an offence?

7. If so, can the competency of such person as a witness be in any, and if so in what, manner restored?

8. Is a party charged with an offence, capable of being a witness either for or against another party charged with the same offence?

9. If so, is it in the discretion of the Court, to direct whether a party so charged, should or should not be permitted to give evidence for or against another party charged with the same offence?

10. If such evidence is admitted, is it necessary that the testimony of such a witness should be confirmed by extrinsic evidence, and if so, to what extent?

11. What effect has marriage upon the admissibility of the husband or wife, as a witness where either of them is charged with an offence? Can the husband under any, and if so what, circumstances, be a witness for or against the wife, or the wife for or against the husband?

12. Does any incompetency arise from the affinity or consanguinity of the witness with the accuser or the party charged? If so, to what degrees of affinity or consanguinity does it extend?

13. Is it competent to the prosecutor or to the Court at any, and if so at what, stage of the proceedings to question the party charged, touching the offence with which he is charged, or in explanation of the evidence given by any of the witnesses produced in support of the charge or for the defence?

14. Are the statements of the party charged, or his conversations with third persons before or after he has been charged with the offence, admissible in evidence either for or against him?

15. If such statements have been made by the party charged, under the influence of a promise or threat, does this render them inadmissible in evidence?

16. Is the confession of a party charged with an offence conclusive evidence of his guilt? Or is he, notwithstanding such confession, permitted on his trial to adduce evidence in proof of his innocence?

17. Is the examination of a witness, whether against or in favour of the party accused, confined to those facts which the witness knows of his own knowledge? Or may he be examined as to what he has learned touching the matter in dispute from declarations, written or oral, of third parties? Is there any, and if so what, rule in this respect, peculiar to the case of a person, who, at the time of his making a declaration, believes himself to be dying?

18. Will a witness be permitted to state in evidence the contents of a written document without producing it, or showing to the satisfaction of the Court that it has been lost or destroyed, or otherwise accounting for its non-production?

19. If either the accuser or the accused seeks to give evidence of the contents of a written document which is in the hands of the opposite party, can the party in whose possession it is, be compelled to produce it? If so, by what means? If not, does his refusal to produce it

Questiions.

authorize the introduction of other evidence of the contents? If so, what are the rules of practice by which the fact of refusal is established?

20. What proof is required of the execution of any written instrument? When there are attesting witnesses to the execution of the instrument, must all or any of them be produced? In case of the death of all or any of the attesting witnesses, is proof of their hand-writing required? Does the age of the instrument make any, and if so what, difference in the mode of proof? Is there any, and if so what, period after which execution of the instrument is presumed without proof?

21. Are there any, and if so what, rules peculiar to the proof of acts of Courts of Justice, or of other bodies or persons acting in the execution of any specific authority?

22. Can evidence of the character of the party accused be given for or against him? If so, at what stage of the proceedings? May such evidence be contradicted? Can evidence of particular acts of good or bad conduct be given in proof of character?

23. Can a witness refuse to answer a question put to him on the ground that the answer may subject him to criminal liability? Or that it may subject him to civil liability? Or that it may discredit him?

24. Can evidence be given of the bad or good character of a witness? If so, is such evidence confined to general reputation, or may it introduce particular facts? To what extent is such evidence, if given, allowed to be met by opposite evidence?

25. Can a witness be asked, with a view of impeaching his present evidence, what he has formerly said? If so, can evidence be given to contradict his answer?

26. Are there any general rules as to the number of witnesses necessary for the establishment of a particular fact?

27. Are witnesses paid for the expense to which the inquiry has put them? Or for their time? If so, from what fund?

# GUERNSEY.

## ANSWERS TO THE FIRST SERIES OF QUESTIONS.

*The Answers of Peter Stafford Carey, Esq., Bailiff of the Island of Guernsey, to the First Series of Questions.*



I. Twelve months ago I left the English bar to take upon myself the office of Bailiff of this Island: to which I had been appointed by Her Majesty, and I have since been engaged in the discharge of my official duties.

II. All criminal jurisdiction in this Island is exercised, and, from the earliest ages of which we have any authentic account, has been exercised, by the Royal Court. Which, in ancient documents, is styled in Latin, *Curia Regis;* in French, "*La Cour de nostre Seigneur le Roy.*"

The Royal Court consists of the Bailiff and twelve Jurats, and is supposed to have assumed its present form in the time of King John.

Its jurisdiction extends over offences of all kinds, except treason, coining and laying violent hands on the Bailiff or a Jurat in the execution of his duty.

In the excepted cases above enumerated, the Royal Court has cognizance of the offence, but has not the power of awarding the punishment. The evidence is taken, the Court decides whether the accused is Guilty or Not guilty: and, if Guilty, the case is remitted for judgment to the Sovereign in Council.

So far as regards criminal matters, the Royal Court may be considered as comprehending within itself two distinct tribunals, standing to one another in the same relation as the police court and the assize court in England.

In whatever capacity the Court sits, the Bailiff presides. It is however to be understood that he has the power of appointing a deputy—the Lieutenant Bailiff, who, in the absence of the Bailiff, occupies his place, and is invested with all his powers.

The Lieutenant Bailiff has always been selected from among the Jurats; and, in the presence of the Bailiff, his power as Lieutenant Bailiff is entirely suspended, and he acts merely as Jurat.

The business of the Bailiff is to conduct the proceedings, to lay the case before the Jurats, and to take their opinions. If the Jurats are equally divided, the Bailiff has a vote, but not otherwise.

The ordinary and less solemn business of the Royal Court is transacted before what is called "*La Cour ordinaire.*"

This Court consists of the Bailiff and at least two Jurats.

In order to provide for due and regular attendance on this Court, the twelve Jurats make the following arrangements. The year being divided into three terms, they distribute themselves into three divisions, so that there are four Jurats especially belonging to each division of the year, or *quarter*, as it is somewhat inaccurately termed. And from this circumstance the *Cour ordinaire* is very frequently called "*La Cour du Quartier.*"

Though two Jurats are sufficient to constitute the *Cour ordinaire*, it more frequently happens that three or four are present.

One of the functions of the *Cour ordinaire* is to act as a court of police; and for this especial purpose the *Cour ordinaire* sits every Thursday.

The more solemn judicial business of the Royal Court is reserved for the full Court, "*La Cour en corps.*" It is not however necessary that all the twelve Jurats should be present. Seven form a quorum.

This is the Court by which all indictable offences are tried.

This Court sits on the Saturday during certain periods of the year. And, even during the time when the Courts are said to be shut, if there is a prisoner in gaol, it is usual for the Court, at his request, to assemble to try the case.

The two tribunals, therefore, which (as far as criminal jurisdiction is concerned) the Royal Court may be considered to comprehend within itself, are—

1. *La Cour ordinaire*, sitting as a Police Court.
2. *La Cour en corps*, sitting as a Court for the trial of indictable offences.

The first of these Courts, consisting of the Bailiff and at least two Jurats; the other, of the Bailiff, and from seven to twelve Jurats.

It is right to add, that the Royal Court is assisted by the *Crown Officers*, i. e. the Procureur and the Controller. The duty of the Crown officers is similar to that of the *Avocats Généraux* in France, before the Revolution. In the *Cour en corps* the crown officers are constituent members of the Court. The Court cannot be opened unless one of them at least is present. In criminal proceedings no act of Court can be passed in their absence, nor any judgment of the Court awarded until they have given the Court their advice—*leurs conclusions.* A sentence would be irregular if it did not appear that the Crown officers had been heard: hence the usual form, "*Ouies les conclusions des officiers de la Reine.*"

In the *Cour ordinaire* sitting as a court of police, the Court cannot proceed to pronounce summarily without having heard the conclusions of the Crown officers. Where the accused party is to be committed for trial, the practice is for the Crown officers to be present; and, in point of fact, they take an active part in the proceedings, and offer their advice to the Court as

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in other cases. But it would appear that their so doing is not essential to the validity of the proceedings. And in the act of Court no mention is made of their conclusions having been heard.

III. The authorities principally relied upon, in the discussion of questions arising upon the Criminal Law, are—

1. "*Terrien's Commentaries.*" This work is in itself nothing more than a treatise on the ancient customary law of Normandy; it is, however, to this Island something more than a text book, so much of it as is confirmed by the "*Approbation*" having the force of law.

2. "*Les Remarques de M. Le Marchant sur l'Approbation des Loix;*" which may be considered as a commentary on the text of Terrien, so far as it is applicable to this Island.

3. The ancient criminal procedure of Normandy, as we find it in Terrien, being very similar to the procedure used in France down to the time of the Revolution, on this subject, the old French authorities are referred to, particularly Pothier, "*Traité de la Procédure Criminelle;*" and, occasionally, Jousse, "*Traité de la Justice Criminelle;*" De la Combe, "*Traité des Matières Criminelles,*" *etc.*

4. In questions relating to criminality and the nature of offences, the English text writers are chiefly relied on, particularly Russell and Archbold.

IV. When it is suspected that any one has committed an offence, the first step taken is for the constable either to take him into custody, or *to warn*, that is, to summon him to appear in Court.

If the constable takes him into custody, it is his duty to report it to the Bailiff and the Crown officers. The Bailiff, after consulting the Crown officers, if necessary, directs whether the accused shall be kept in custody till the next sitting of the *Cour ordinaire* or not.

If not, the accused is set at large and required to appear in Court.

There is, at this stage of the proceedings, no power to take bail. The accused cannot be let out on bail except by the authority of the Court.

V. The accused is brought before the *Cour ordinaire.*

This court exercises a summary jurisdiction over cases of assault, breach of the peace, disorderly conduct, disputes between masters and apprentices, and a variety of minor offences, including petty thefts.

The utmost punishment this Court can award is imprisonment for one month; the whole, or any portion of which, may be in solitary confinement, and on bread and water.

This Court has also jurisdiction, in case of the breach of any ordinance of the Royal Court, where the penalty imposed by the ordinance is a fine not exceeding thirty livres tournois.

VI. Where there is no exercise of summary jurisdiction, a preliminary investigation takes place before the *Cour ordinaire.* The investigation is in private. The witnesses, including those summoned on the part of the accused, are called in one by one, and examined separately on oath. The Crown officers are present during the examination, and, after having heard the witnesses, they prepare the draft of an indictment, or acte d'accusation, according to the facts deposed to. The accused is then called in; the indictment is read over to him; and, after being warned that he is not obliged to answer unless he chooses and that whatever he says will be produced on the trial, he is interrogated by the Court. The questions put to him and his answers thereto are severally taken down by the Greffier. The first question put to him is, whether he is "*Guilty*" or "*Not guilty.*" After this he is interrogated upon the facts that have been spoken to by the witnesses.

He is also at liberty to make any further statement that he pleases. It may readily be supposed that, if he has in fact committed the offence, any statement he may make will be likely to criminate him. But, on the other hand, if he is innocent and has a true story to tell, his story, so told in answer to the inquiries of the Court, without his having heard the evidence against him, cannot fail to have great weight: this gives a great, and certainly not an undue, advantage to an innocent man, and is of particular importance to him, where the story he has to tell, as is not unfrequently the case, happens to be otherwise incapable of proof. Besides which, if it comes out from his statement that there are other persons who have any evidence to give, they are immediately sent for by the Court. I feel the more called upon to offer these observations, as the practice of interrogating the accused is one which, as an English lawyer, I was, on undertaking my present office, nowise prejudiced in favour of.

The interrogatory being concluded the public are admitted. The practice is for the Crown officers to offer their opinion to the Court with respect to the course to be pursued. The Court thereupon pronounces its decision, following in general, but not necessarily, the suggestions of the Crown officers. If there appears to be sufficient ground to put the accused on his trial, the sentence of the Court is, in effect, that the Crown officers do proceed against him, and that he be committed to prison. If the Court deems it to be a bailable case, the sentence of the Court fixes the amount of the bail. And, where the charge brought against the accused is not a serious one, the Court is content to take his "*Caution Juratoire;*" that is to say, he is not required to go to prison, provided he will undertake on oath to appear in Court to answer the accusation. The sentence of the Court is reduced into an Act and entered on Record.

If there is no sufficient evidence to warrant a trial, the accused is dismissed. In this case there is no Act of Court, no record made of the proceeding.

I may here add, in anticipation of the 27th question, that, until the interrogatory of the accused has been taken, the Court has the power, without any act of Court being entered of record, to adjourn the proceedings to a subsequent day, the accused being still retained, if necessary, in the custody of the constable.

The place in which the constables detain the persons who are in their custody is within the walls of the prison, but is nowise under the control of the gaoler.

After the interrogatory has been taken, the mode of adjournment is altogether different.

There must then be an Act of Court, whereby, unless admitted to bail, the accused is committed to prison in order that further information may be obtained.

VII. Where the jurisdiction is not of a summary kind, the trial takes place before the *Cour en Corps*, consisting of the Bailiff and from seven to twelve Jurats assisted by the Crown officers. The functionaries who sent the party to trial are capable of acting, and very generally do act, as members of that Court; and, in particular, it is the business of the Bailiff, after having presided at the committal, to preside also at the trial.

VIII. The charge having been brought before the Court by the constable, and the Court having ordered a prosecution, the proceedings are instituted and carried on by the Crown officers, and in their name.

The Crown officers have no power of causing the proceedings to be abandoned. They cannot take any step analogous to the entering of a "*Nolle prosequi.*"

But I apprehend that the Court has the power, on the application of the Crown officers, to cause the proceedings to be abandoned. Where proceedings are ordered to be abandoned on grounds affecting the merits of the case, I apprehend that the Court would not authorize the institution of a second accusation for the same offence. Where the proceedings are allowed to be abandoned on the ground of their being irregular, the original charge may be prosecuted in an amended form.

IX. The charge against the party accused is put into a definite form, in writing, before his interrogatory is taken. After this it is not competent to the Crown officers to vary the charge either in form or substance. If any alteration is requisite, the course is for the Crown officers to apply to the Court, before the trial comes on, for leave to abandon the proceedings in order to commence afresh. The original indictment being thus set aside, an amended indictment may be framed: and upon this fresh indictment the interrogatory must be taken anew, the party charged being at liberty to model his defence as he thinks fit. On some occasions, however, the Court, on the application of the Crown lawyers and after calling on the prisoner to shew cause, has, in matters not material to the merits of the case, allowed amendments to be made in the charge.

X. XI. The same functionaries are the judges both of law and fact; and, whatever may be the nature of the defence set up by the party charged, the mode of proceeding is the same. The only difference will be in the line of argument adopted by his advocate.

XII. XIII. There is no reason why the party charged should confine himself to one line of defence to the exclusion of any other.

For instance, in a recent case where a public officer was accused of embezzlement, *Péculat*, his advocate argued—

1°. That by the law of the Island *Péculat* was not an indictable offence.

2°. That the indictment was bad, the technical term *Péculat* not being employed.

3°. That the facts alleged were not proved.

XIV. The party charged is entitled to the assistance of one advocate, selected by himself; and this, whether he is or is not able to defray the expense of legal assistance.

On the first Criminal Court day after he is committed for trial (unless some earlier day is fixed by the Court), the party charged is produced in Court; and there, the indictment being read over to him, he pleads "*Guilty*," or "*Not Guilty*," and makes choice of his advocate.

Occasionally the party charged has been allowed to obtain the assistance of a second advocate. But one only is allowed to address the Court.

XV. The witnesses required at the preliminary investigation before the *Cour ordinaire*, whether for the prosecution or for the defence, are summoned by the constable.

The witnesses required on the trial, whether for the prosecution or for the defence, are summoned by the Crown officers.

In either case a witness may be required to produce documentary evidence.

If a witness does not obey the summons, he is liable to fine or imprisonment, as for a contempt.

No payment is made to witnesses in respect of their attendance at the investigation before the *Cour ordinaire*.

The witnesses summoned on the trial, whether for the prosecution or for the defence, are paid by the Crown.

It is to be observed, however, that, if the party charged is convicted, he is sentenced to pay costs.

XVI. With respect to the stage in the above series of proceedings at which evidence is first received, it will be seen, from my answer to the 6th question, that, at the very commencement of the proceedings, when the charge made by the constable is gone into before the "*Cour ordinaire*," the witnesses are heard, on oath, vivâ voce, in presence of the Court, the Crown officers, and the Greffier.

It has of late years become the practice to allow some other officers of the Court to be present at the private investigation: but they have no functions to perform there; and I think it would be better if the practice were discontinued.

Before I proceed to answer the questions next in order, it may be well to observe that there are two kinds of trial.

The one is denominated by Terrien, "*Le Procès Extraordinaire.*"

The other, "*Le Procès Ordinaire.*"

At the present day, the former (*Le Procès Extraordinaire*) is more usually designated as a proceeding "*Au grand Criminel.*"

The latter (*Le procès ordinaire*) is more usually designated as a proceeding "*Au Criminel*" simply, or sometimes, to make the contradistinction more marked, "*Au petit Criminel.*"

I shall have occasion to point out hereafter the cases to which each of these kinds of trial

GUERNSEY.

*Answers to Questions.*

SERIES I.

P. S. Carey, Esq., Bailiff.

more particularly applies: at present it is enough to state that the proceeding *Au grand Criminel* is deemed the more solemn, and reserved for the more serious offences.

The following is an outline of the proceeding *Au grand Criminel.*

The party accused having pleaded to the indictment and chosen his counsel, a day is fixed for taking the evidence on the part of the prosecution.

The evidence is taken before the *Cour ordinaire,* sitting in private. The witnesses are introduced one by one, sworn and examined. Every question and answer is separately taken down by the Greffier. Twelve witnesses only are allowed.

The witnesses having been heard and their evidence taken down, they are on a subsequent day summoned again before the *Cour ordinaire* (sitting in private as before), for the "*Récolement.*" Each of them severally has his evidence read over to him, and is asked whether he has anything to add or to alter.

His answer is taken down, and added to the evidence previously taken.

The next step is the "Confrontation." The witnesses and the accused are *warned* to attend. The summons given to the accused contains a list of the witnesses with whom he is to be confronted. Before the confrontation he is entitled to a copy of the evidence. At the confrontation, the accused being in Court together with his advocate, the witnesses are called in one by one. The evidence of each is, in his presence, read over to the accused. Thereupon the witness is cross-examined; and the cross-examination is taken down by the Greffier in the same manner as the examination in chief.

The confrontation being over, the accused party states whether he wishes to have any witnesses called for the defence. If he wishes to have witnesses called, he must state what facts they are to prove, and must give the names of the witnesses. If the facts offered to be proved are deemed irrelevant, the Court does not allow the examination of witnesses. If the facts are deemed relevant, the witnesses named by the accused, not exceeding twelve in number, are summoned by the Crown officers.

On the day for which they are summoned, their evidence is taken down in writing in the same manner as the evidence of the witnesses for the prosecution.

They are examined by the counsel for the accused, and cross-examined by the Crown officers.

The evidence being now completely taken, and copies of it having been given both to the Crown officers and the counsel for the accused, the next step is to produce it before the Court on the trial. This takes place in open Court before the *Cour en Corps.* The interrogatory of the accused and the depositions of the witnesses are read over. The whole of the evidence being thus gone through, the counsel for the accused addresses the Court. And it is to be observed that he has to enter upon the defence without the case having been in any way opened by the Crown officers, so that he has not heard what are the points mainly relied on in support of the accusation.

After the defence, the Crown officers are heard. Their business is to state the result of the evidence, to advise the Court on matters of law, and to suggest the sentence which they deem to be suited to the case. The Bailiff then sums up the case, and collects the opinions of the Jurats: the opinion of the majority constitutes the sentence of the Court.

I now come to the other mode of proceeding, the "*Procès Ordinaire*" of Terrien, the proceeding "Au Criminel," as it is now usually termed.

It will be observed that, down to the time when the accused chooses his Counsel, in whichever way he is to be tried, the mode of proceeding is precisely the same.

If he is to be tried au criminel, in the ordinary way, the trial takes place in open Court, before the *Cour en Corps,* on the first Criminal Court day after the accused has chosen his counsel. The witnesses both for the prosecution and the defence are summoned by the Crown officers. Not more than twelve witnesses can be tendered on each side.

All the witnesses on each side being called, *évoqués,* appear together at the bar.

Any objection to the admissibility of witnesses is now to be taken. Among others, it is a sufficient objection that a witness comes forward without having been summoned.

The Court having disposed of the objections to admissibility, the oath is administered by the Bailiff to the whole array of witnesses admitted to give evidence, on either side.

The interrogatory of the accused is then read by the Procureur. After this the witnesses are heard; the witnesses for the prosecution first, and afterwards those for the defence, each witness being subject to cross-examination.

From this point, the proceedings are carried on as "au grand criminel." The counsel for the accused is heard first; and then the Crown officers give their conclusions; after which the Court proceeds to award judgment.

I now return to the questions, and proceed to answer them in numerical order.

1st. As they affect the proceeding "au grand criminel."

2nd. As they affect the ordinary proceeding "au criminel."

1. As to the proceeding au grand criminel:—

Applying the 16th question to the evidence taken subsequently to the committal. Evidence is first received after the prisoner has pleaded and chosen his counsel. It is taken down by the Greffier in the shape of question and answer before the Cour ordinaire sitting in private.

XVII. The party accused is allowed at the confrontation to hear the evidence which has been taken against him, having before the confrontation received a copy of it.

XVIII. The confrontation being completed, the accused names his witnesses, who are summoned for a subsequent day by the Crown officers.

XIX. At the confrontation, as the evidence of each witness respectively is read, the accused party is allowed to question that witness to any extent.

XX. Fresh evidence for the prosecution cannot be taken after the confrontation; consequently

there can be no evidence in reply. After the party accused has given in his list of witnesses, he is precluded from calling for any further evidence.

XXI. The whole of the evidence is taken down in writing.

XXII. The whole of the evidence, so taken down in writing, is at the trial produced before the Cour en Corps. No further proof of any kind can be admitted. No question can be made before the Cour en Corps of the accuracy of the depositions. But, at the confrontation, when the evidence of each witness is read over in his presence, the advocate for the accused party has an opportunity of cross-examining the witness, to ascertain whether his evidence had been accurately taken.

XXIII. The counsel of the party charged has the privilege of being heard on all questions of fact or law, of cross-examining at the confrontation the witnesses for the prosecution, and afterwards of examining the witnesses for the defence.

I now proceed to answer the foregoing questions, as applied to the ordinary proceedings *au criminel.*

XVI. *a.* To apply the sixteenth question to evidence taken subsequent to commitment, —The whole of the evidence is received at the trial, where it is taken vivâ voce in open Court before the *Cour en Corps.*

XVII. *a.* The party accused is at the bar of the Court, and hears the evidence as it is given.

It is to be observed, however, that the party accused does not know what evidence the witnesses gave in the preliminary examination, or *Enquête,* as it is termed.

XVIII. *a.* The party accused is allowed to produce evidence at the trial, and his witnesses are heard immediately after the witnesses for the prosecution.

XIX. *a.* The party accused is allowed to question the witnesses produced against him respectively, when they have gone through their evidence in chief. This cross-examination is conducted for the prisoner by his counsel. And I am not aware of any reasonable extent to which it may not be carried.

XX. *a.* The rule is that, after the calling, "*évocation,*" of the witnesses, no additional witness can be produced either for the prosecution or for the defence. Hence, on the part of the prosecution, no fresh witnesses can be called in reply. And it appears to be understood that the Court has no authority to receive the testimony of any person, who has not been summoned and evoked as a witness, on the part either of the prosecution or the defence.

XXI. *a.* No part of the evidence is taken down in writing.

Any notes, that may be taken by members of the Court, are merely for their own convenience, and have no official authority.

XXIII. *a.* The counsel of the party charged has the privilege, as *au grand criminel,* of being heard on all questions of fact or law, as well as that of examining and cross-examining the witnesses produced at the trial.

The answers to the remaining questions will apply equally to both kinds of trial.

XXIV. The Crown officers are heard last. I may observe, however, that it would be incorrect to consider the Crown officers merely as "*the party accusing.*" They are indeed public functionaries entrusted with the conduct of the prosecution; but they are also the responsible advisers of the Court; and they have, not only to state their view of the facts, and to inform the Court of what the law is, but also to advise the Court as to the sentence to be given, and the amount of punishment to be awarded.

XXV. All questions both of law and fact are decided by the Court.

XXVI. Judgment is awarded by the Court. In case of conviction, sentence is pronounced by the Bailiff.

XXVII. I have already mentioned the powers of adjournment possessed by the *Cour ordinaire,* sitting as a Court of Police.

After the *Cour en Corps* is seised of the proceedings, I apprehend it has, of common right, a discretionary power to adjourn or suspend them. For instance, if a trial begins today, and it is too long to be gone through with at one sitting, it may be adjourned till tomorrow, and so on from day to day till it is brought to an end. And, in like manner, in case of the absence of a material witness, the proceedings may be suspended.

XXIX. There is no appeal.

XXX. If judgment is given against the accused party, it becomes the duty of the Sheriff (Prevost) to carry it into execution; the Act of Court is his authority, without any further warrant. There is this exception to the general rule, that, when a convict is to be transported, application is made to the Privy Council.

XXXI. I beg to refer to the forms furnished by the Procureur.

XXXII. I beg to postpone for the present my answer to the thirty second question.

XXXIV. With reference to the subjects more especially touched upon in the questions contained in SERIES No. 1, I beg to suggest the following improvements.

1. Except where the case requires to be remitted for judgment to the Sovereign in Council, let the proceeding "au grand criminel" be abolished.

2. Let it be declared to be the duty of the presiding Judge to take notes at the trial.

3. Let the functionaries, who have sent a party to trial, be declared incapable of acting at the trial, as members of the Court.

4. Let the evidence on which a party is sent to trial be taken down in writing; and, a certain time before the trial, let the prisoner's counsel be entitled to copies of the depositions, at the expense of the Crown.

5. Let the number of witnesses on each side be no longer limited to twelve.

6. Let the Court have the power of hearing witnesses, though not summoned or evoked, on the part either of the prosecution or the defence.

PETER STAFFORD CAREY, *Bailiff of Guernsey.*

GUERNSEY.

*Answers to Questions.*

SERIES I.

H. O. Carré, Esq., Lieut. Bailiff. 19 July, 1846.

No. 2.

*The Answers of Hilary Olivier Carré, Esq., Lieutenant Bailiff of the Island of Guernsey.*

1. Twenty two years' experience in the practice of the Royal Court of Guernsey. I practised as Advocate during five years, and have been seventeen years a Jurat of the Royal Court.

2. The Royal Court, consisting of the Bailiff and twelve Jurats, is the only tribunal that exercises criminal jurisdiction in the Island. It has existed in its present form, and has exercised that jurisdiction, from a time anterior to all known records relating to the Island: and its power has been repeatedly confirmed by Royal Charters. The jurisdiction of the Court extends over all offences, except treason, coining and assaulting the Bailiff or Jurats when in the exercise of their office. In these three cases the cognizance of the matter belongs to the Court; but the sentence is reserved to the Crown.

3. The chief authorities relied on are "Terrien's Commentaries on the law of Normandy," so far as sanctioned by the "Approbation des loix," and various commentators on the criminal law of France and England.

4. The constables are bound to inquire into the particulars of any criminal act or breach of the peace committed in their respective parishes. A constable may, of his own authority or in consequence of directions from the Bailiff or Crown officers, either take the suspected party into custody, or give him notice to appear before the Court sitting as a tribunal of correctional police. After having taken a person into custody, the constable is bound within twenty four hours to inform both the Bailiff and the Crown officers thereof, and to follow their directions, as to whether the party is to be kept in confinement or set at liberty, with or without notice to appear before the Court.

5. The Court of Correctional Police, composed of the Bailiff and two Jurats at the least, and assisted by the Crown officers, disposes summarily of cases of assault, breaches of the public peace, and other minor offences.

6. When the offence is not of a nature to be summarily disposed of, the Court proceeds to examine each witness upon oath separately and in private. After having heard the witnesses produced by the constables, the Court may remand the prisoner for the purpose of obtaining further evidence. When the evidence appears sufficient to put the accused party upon his trial, the draft of the indictment is drawn up by the Crown officers and approved by the Court. It is then read to the accused party, who is afterwards questioned by the Court, being first cautioned, that whatever answers he may think proper to give will be taken down in writing and used at his trial; this is called the "interrogatoire." It is proper to add, that the accused may, if he pleases, refuse to answer the questions put to him. The Court then decides whether he shall be committed for trial, remanded or discharged. If committed or remanded, he is either sent to prison in charge of the Sheriff, or held to bail. In some cases, the only security taken has been the promise upon oath of the accused party that he shall hold himself ready to appear before the Court when required: this is called a "caution juratoire."

7. The trial takes place before the Royal Court sitting as a Criminal Court; for which purpose the Bailiff and seven Jurats at the least must be present. The functionaries who have sent the party to trial are capable of acting as members of such Court.

8. The proceedings against the accused are instituted by the Crown officers, who are specially authorized to that effect by the act of Court by which the party is committed for trial. The Crown officers have no power, of themselves, to cause the proceedings to be abandoned: but this may be done, with the leave of the Court, at any time in cases "Au petit Criminel," before the cause is called on and the trial commenced; and, in cases "Au grand Criminel," at any time before the "Confrontation." The proceedings may then recommence with the framing of a new indictment followed by an "interrogatoire" as before.

9. The charge must be put in writing in a definite form before the "interrogatoire" is taken; and it cannot afterwards be varied, either in form or substance, without the consent of the accused party, in which case the "interrogatoire" must be taken afresh on the indictment as altered. But the whole of the proceedings may be abandoned and recommenced with any needful alterations in the indictment, in the manner stated in the answer to the last question. Of course there is nothing to prevent the accused from shaping his defence as he may think proper.

10. The accused party, on the day when he is first indicted at the suit of the Crown officers, is at liberty to plead at once, and to obtain a decision of the Court on any question of law arising out of the form of the indictment. But that proceeding is not usual, as, under the general issue of "Not guilty," the accused may afterwards argue all questions, both of law and of fact: this is a privilege allowed to defendants in criminal cases only.

11. He pleads "Not guilty:" and the Court thereupon makes a rule ordering the Crown officers to prove the indictment. The trial usually takes place on the next Court day. The Criminal Court sits every Saturday during term.

12. No.

13. No.

14. When the accused party is first called to plead to the indictment, he has the right to make choice of one of the Advocates of the Court to act as his counsel. The Advocate chosen is bound to undertake the defence, whether the accused is able to pay or not. The latter is, however, at liberty to employ other counsel at his own expense, but only for the purpose of giving advice, or of assisting in the examination of witnesses; the Advocate chosen on the occasion above mentioned being alone permitted to address the Court on behalf of the accused.

15. The attendance of witnesses, required by the Crown officers or by the accused party,

may be compelled by fine and imprisonment. An unlimited number of witnesses may be called by either party before the committal; only twelve are allowed on each side at the trial.

16. The stage at which evidence is first received is before the accused party is committed for trial; and that evidence, as before stated, is heard upon oath by the Court in presence of the Greffier and Crown officers only. No authentic notes are taken of the evidence then produced: and such notes, if taken, would not be made use of at the trial.

17. In cases "au petit criminel," which are those where the offence does not amount to felony, the party accused has no opportunity to hear the evidence produced against him until the day of trial, when the witnesses, both on the part of the Crown and of the prisoner, are heard *vivâ voce* before the Court. In cases "au grand criminel," which are where the offence is a felony and may be punished by death, or by transportation to a penal settlement, or banishment from the bailiwick for seven years or upwards, the whole of the evidence is taken down in writing after the prisoner has pleaded to the indictment. The forms of proceeding observed in such cases being fully explained in the answers given by Her Majesty's Procureur, it is not necessary for me to detail them. It will be sufficient to state, in answer to the present question, that there is a stage of the proceedings "au grand criminel" called the "confrontation," when the witnesses for the prosecution, after having been on a former day examined in private, and their deposition taken in writing, are brought face to face with the prisoner (assisted by his counsel) in the presence of the Court, and when he has an opportunity of questioning them to any extent. The prisoner must be furnished with a copy of the depositions against him on the morning of the "confrontation."

18. The party committed for trial is allowed to produce evidence on the day of his trial in cases "au petit criminel," and after the "confrontation" in cases "au grand criminel."

19. The accused may question to any extent the witnesses produced against him; in cases "au petit criminel," on the day of the trial, in cases "au grand criminel" at the time of the "confrontation."

20. In cases "au petit criminel," no fresh evidence can be brought, for or against the accused, after the witnesses have been sworn on the day of trial. "Au grand criminel," no fresh evidence can be brought against the accused after the "confrontation" has begun. After it is ended, he is allowed to name the witnesses he requires (not exceeding twelve in number) to prove the facts he desires to urge in his defence, and their evidence is afterwards taken in writing on a convenient day. No further evidence is afterwards allowed to be brought on his behalf, except witnesses as to character, which he is permitted to call on the day of the trial, and to examine *vivâ voce* before the Court.

21. The evidence, "au petit criminel," is not taken in writing, except in the case of a necessary witness, who might be about to leave the Island and could not be present to give his evidence on the day of trial; his deposition is then taken in writing according to the forms in use "au grand criminel," with this exception, that the "deposition," "récolement" and "confrontation" may, in pressing cases, take place on the same day.

22. The evidence, when in writing, is publicly read before the Court at the trial. No proof is allowed that it does not correctly represent the whole of what was deposed to; and such proof, owing to the method of taking the evidence, can never be required. The deposition of such witness is first taken by way of question and answer; the "récolement," which takes place some time after, gives him an opportunity to alter, add to or amend his first declaration; and the prisoner at the "confrontation" is allowed, with the assistance of his counsel, to question each witness to any extent; on this occasion, every question put by the prisoner, and the answer thereto, are read over to him the moment they are written, that he may be satisfied as to their being correctly taken down.

23. The counsel for the accused has in all cases the privilege of being heard at the trial on all questions, both of law and of fact, and of examining the witnesses for and against the prosecution at the proper stages of the proceedings, as above stated.

24. The counsel for the accused is heard after the evidence on both sides is closed; the Crown officers then comment on the evidence, after discussing the points of law, if any have been raised, and finally give their "conclusions;" that is, they declare their opinion impartially as to the innocence or guilt of the accused, and pray for the judgment of the Court accordingly; adding, when it is their opinion that he is guilty, what degree of punishment they consider proportioned to the offence.

25. The Bailiff and Jurats decide both.

26. The Bailiff sums up the case and takes the opinions of the Jurats individually and in open Court; the opinion of the majority is declared by the Bailiff to be the judgment of the Court. When the Jurats are equally divided in opinion, the Bailiff has the casting vote.

27. Before the trial the proceedings may be suspended a reasonable time, with the leave of the Court, on account of the sickness of the prisoner, or the absence of certain necessary witnesses for or against the prosecution. The trial, once commenced, must be continued from day to day till concluded.

28. For a full and circumstantial statement of the proceedings in criminal prosecutions, I beg to refer to the answers of Her Majesty's Procureur to this series of questions.

29. No appeal is allowed in criminal cases.

30. The Sheriff proceeds to the execution of the sentence in the presence of the Crown officers, for which the judgment of the Court is his sufficient warrant. There is an exception when the sentence is transportation to a penal settlement; in which case the act of court places the criminal at the disposal of the Crown, and the Bailiff reports the case to Her Majesty's Secretary of State for the Home Department.

31. The forms in use are given in the answers of Her Majesty's Procureur and Deputy Greffier.

GUERNSEY.

*Answers to Questions.*

SERIES I.

H. O. Carré, Esq., Lieut. Bailiff. 19 July, 1846.

32. The Bailiff, Crown officers, and Greffier or Clerk of the Court are appointed by the Crown, and hold office during the pleasure of the Crown. The Jurats are chosen by the States of Election; a body consisting of the Bailiff and Jurats, the Rectors of parishes, the Procureur, the Constables, of which there are two in each parish, and the Douzaines or municipal councils of the ten parishes and four cantons or districts of the town parish; in all 222 persons. The Jurats are compelled to serve for life, and can only be removed for sufficient cause by order of Her Majesty in Council. They may, however, obtain their discharge, on account of ill health, age or infirmity, by application in the first place to the States of deliberation, and afterwards to Her Majesty in Council. The Constables and Douzainiers, whose offices are also compulsory, are elected by the rate payers of their respective parishes. The Constables are obliged to serve for one twelvemonth at the least, and are at liberty to retain their office for three years. The Douzainiers are elected for life, but may obtain their discharge after sixty years of age. They also vacate their offices, if they cease to reside in their respective parishes or cantons; and they may be removed for sufficient cause by a judgment of the Court. Her Majesty's Sheriff is elected, like the Jurats, for life by the States of Election. The Greffier and the Sheriff may appoint fit persons to act as their deputies, who are sworn into office by the Court on being presented by the Crown officers. The Crown officers themselves cannot exercise office by deputy.

33–34. I cannot say that I am prepared to point out the defects of the present system. But, should any part of it appear to Her Majesty's Commissioners either inconsistent with, or insufficient for the attainment of the ends of justice, I shall be ready and anxious to give any further information that may be required on the subject, and to assist, jointly with my colleagues, in suggesting such improvements as may be in accordance with the institutions of the Island.

HILARY OLIVIER CARRÉ,

*Lieut. Bailiff of Guernsey.*

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No. 3.

John Le Marchant, Frederick Mansell, Thos. Wm Gosselin, Harry Dobrée, Jun., Edgar Mac Culloch, and William Peter Metevier, Esqrs., Jurats.

*The Joint Answers of John Le Marchant, Frederic Mansell, Thomas William Gosselin, Harry Dobrée, Junior, Edgar MacCulloch, and William Peter Metivier, Esqrs., Jurats of the Royal Court of Guernsey, to the first Series of Questions.*

1. By having been constable, and served under parochial offices, and more particularly by discharging the duties of Jurats of the Royal Court, since our respective elections.

2. The Royal Court is the only tribunal which exercises criminal jurisdiction in Guernsey. It takes cognizance of every offence committed, except three, viz., treason, false coining and laying violent hands on the Bailiff or on any of the Jurats, when exercising their magisterial functions, the punishment whereof is reserved for her Majesty, and has existed from time immemorial.

3. The 12th Book of Terrien, *L'Approbation des Lois*, with Le Marchant's Commentary thereon; also, French and English Commentators.

4. The constables endeavour to apprehend the party suspected, by order of the Bailiff or the Crown lawyers, and sometimes on their own responsibility.

5. The "Cour Ordinaire," consisting of the Bailiff, or his Lieutenant, and two (at least) or four Jurats, at which one or both the Crown lawyers must be present, exercises summary jurisdiction in cases of breaches of the peace, assaults and other minor offences, when the punishment does not exceed one month's imprisonment, sometimes with solitary confinement on bread and water for part or the whole of the time; and for breaches of ordinances, where the maximum of the fine does not exceed 30*l.* tournois=2*l.* 2*s.* 8½*d.* sterling.

6. Every accused party is brought by a constable before the Cour Ordinaire, composed as stated in the preceding answer, if the case is not susceptible of being dealt with summarily. Witnesses are heard in private. An act of accusation is drawn up by the Crown lawyers, which must be approved of by the Court. The accused is then called in, and the accusation read to him. The Court then proceeds to take his "Interrogatoire" (which is read at his trial, and whereof he obtain a copy some days before), but previously warns him that he is not obliged to answer the questions put to him; the questions and his answers are taken down in writing. The public are then admitted, when the accused is committed to take his trial, and placed in the custody of the sheriff, who takes him to prison, unless he gives bail (in cases susceptible of it) to appear before the Court which is to try him. After witnesses have been heard in private, further evidence may sometimes be required, in which case an accused may be remanded, either before or after his "Interrogatoire" has been taken, according to circumstances. Should he subsequently be discharged, an act to that effect is made in the latter but not in the former case. In doubtful cases, an accused has sometimes been made to give bail, or make oath, to appear, whenever summoned by the Court, to be indicted. When an accused is brought before the Court, if he has any witnesses, the constable warns them to appear, and the Court always hears them.

7. He is tried before the "Cour en Corps," consisting of the Bailiff or his Lieutenant, and seven Jurats at least: the Bailiff and Jurats who committed him are capable of acting as members of the Court.

8. The proceedings against an accused party are instituted by the Crown lawyers, and cannot be abandoned but with the sanction of the Court seized of the case. Indictments have been quashed, on the application of the Crown lawyers, to commence "de novo;" but we have no knowledge of any proceedings having been abandoned after an accused has been committed to take his trial.

John Le Marchant, Frederick Mansell, Thos. Wm. Gosselin, Harry Dobrée, Jun., Edgar MacCulloch, and William Peter Metivier, Esqrs., Jurats.

9. As stated in the sixth answer, the form or substance of an accusation cannot be altered, but may be quashed to recommence proceedings; "au Petit Criminel," where the witnesses are heard vivâ voce, at any time before the witnesses are sworn to give their evidence; and "au Grand Criminel," at any time before the "Confrontation:" and ample time is allowed to the accused to prepare for his defence.

10. The counsel of the accused ought, in strictness, to plead the question respecting the relevancy of the charge before the witnesses are heard: but he is permitted to do it, when he pleads to defend his client.

11. He pleads Not guilty.

12. No.

13. No.

14. Every individual brought to trial is allowed to chose one of the Advocates for his counsel, who pleads for and assists him, whether he has or has not the means of paying him, he may also avail himself of the advice of other counsel.

15. Every witness is bound to appear in Court when he has been summoned by the proper officer, under penalty of fine or imprisonment. In criminal cases, the Crown lawyers summon both their own witnesses, as well as those of the accused, and order the production of any documentary evidence which may be required.

16. Vide answer 6.

17. "Au Petit Criminel," at the trial; "au Grand Criminel," the depositions are shown to the counsel of the accused on the morning of the "Récolement."

18. "Au Petit Criminel," at the trial; "au Grand Criminel," after the "Confrontation."

19. Every latitude is allowed to the accused to question the witnesses at the trial, "au Petit Criminel;" and at the "Confrontation," "au Grand Criminel."

20. No fresh evidence can be produced against the accused after he has been summoned to appear at the "Confrontation," as the summons contains the names of the witnesses which have given their evidence. When the witnesses of the accused party have had their depositions taken down in writing, the whole of the evidence is closed.

21. The whole of the evidence is taken down in writing, "au Grand Criminel," being cases in which the accused may be condemned to seven years' banishment or more, or to death.

22. "Au Grand Criminel," the evidence is read at the trial, and cannot be impugned by either party, the witnesses against the accused having confirmed their respective depositions at the "Récolement," and he having had the means of cross-questioning them at the "Confrontation."

23. The counsel of the accused is allowed to argue any point of law or of fact, and to examine every witness who is brought to give evidence against his client.

24. The accusers are heard last.

25. The Bailiff and Jurats decide the questions of law and of fact.

26. By the majority of the Court, the Bailiff having the casting vote when the opinions of the Jurats are equally divided.

27. The Court may adjourn, but seldom does so, except when the proceedings cannot be terminated on the first day.

28. The following are the proceedings which take place "au Grand Criminel."

The accusation is made in the manner described in the sixth answer; the accused is then summoned to appear before the Court; the indictment is read to him, and he is asked if he is Guilty or Not guilty; his answer is recorded; he then chooses one of the Advocates for his counsel; witnesses for the prosecution are subsequently summoned to appear before the "Cour Ordinaire;" every witness, after having been sworn, is heard in private, and his evidence taken down in writing by the Greffier. When all the witnesses have been heard, they are again summoned, as before, for the "Récolement;" after having been sworn, the evidence which a witness has given is read to him; he is then asked, if he confirms it or if he has anything to alter or to add to it; when this has been done his evidence is complete. When all the witnesses have been "Récolés" they are again summoned for the "Confrontation" (unless it takes place immediately after the "Récolement"), when they are brought separately in presence of the accused accompanied by his counsel, who is asked if he has any objection against the witness: if he has, a minute is taken of his objection, and the question of its validity or invalidity argued at the trial before the evidence is read; the witness is then sworn; his evidence is read before the accused, who cross-questions him if he thinks proper; the questions and answers are taken down in writing by the Greffier. When all the witnesses have been examined by the accused, he is asked on what points he proposes to ground his defence: if he has any witnesses in support, he tenders a list of their names. They are subsequently summoned to appear before the "Cour Ordinaire," are examined separately by the accused and by the Court, if they have any questions to ask. Their evidence is taken down in writing by the Greffier, and, after they have been all heard, the whole evidence is closed. Authenticated copies of the evidence are delivered to the Crown lawyers and to the accused by the Greffier. At the trial the indictment, the interrogatoire and the evidence are read; the counsel of the accused is heard for the defence; then the Crown lawyers for the prosecution, who close their pleadings by giving their conclusions; after which the Bailiff sums up; and judgment in open Court is pronounced by the Jurats, who give their opinion according to seniority.

29. There is no appeal in criminal cases.

30. The sentence is carried into execution by the Sheriff. If the accused is condemned to transportation, he is confined in the prison until an order for his removal to England is received from the Secretary of State; if to death, he is usually executed on the Friday after his trial, which takes place on a Saturday, or on any other day which the Court may appoint: should

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the Jurats who have tried him recommend him to mercy, an application is immediately made to Her Majesty, and the execution of the sentence suspended until her pleasure has been made known. When an accused has been condemned to banishment, he is taken to prison until he is sent out of the Island, which usually takes place a few days after. In all other cases the sentence is carried into immediate execution.

31. As Her Majesty's Greffier will furnish the different forms which have been asked, we beg to refer to them.

32. The Bailiff is appointed by Her Majesty's Commission, and holds office during pleasure.

The Jurats are elected by the States, and are compelled to serve gratuitously for life. A Jurat cannot be removed, except to be appointed Bailiff, or in case "si est d'estre reprins et diffamé de son serment."

The Queen's Procureur, Contrôle, and Greffier are appointed by Her Majesty's Commission, and hold office during her pleasure.

The Sheriff is elected by the States for life.

The Serjeant is appointed by the Lieutenant Governor with the authority of the Secretary of State for the Home Department.

The Constables are elected by the ratepayers in their respective parishes and are obliged to serve one year; but they may remain three years in office.

33. There are Actions "en Adjonction," such as for libel, defamation, assaults, &c., which partake of the nature of criminal and civil actions, the object of which is to obtain damages for the injuries received and get the defendant fined. In all these cases, one of the Crown lawyers pleads for the prosecutor and the other for the defendant.

34. Although the system of criminal jurisprudence may appear very strange and extraordinary to those who are unacquainted with its operation, yet, as it has worked well for so many centuries past, is adapted to a small community, and wherewith the inhabitants are satisfied, we cannot but hesitate to suggest alterations which it might be supposed would improve the system, and yet might possibly turn out a failure in practice.

JOHN LE MARCHANT,
FREDERICK MANSELL,
T. W. GOSSELIN,
HARRY DOBRÉE, Jun.,
EDGAR MAC CULLOCH,
W. P. METIVIER,

*Jurats of the Royal Court of Guernsey.*

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## No. 4.

*The Joint Answers of the undersigned Thomas Le Retilley, Thomas De Havilland, and Thomas Andros, Esqrs., Jurats of the Royal Court of Guernsey, to the first Series of Questions.*

Thomas Le Retilley, Thomas De Havilland, and Thomas Andros, Esqrs., Jurats. 20th July, 1846.

1. Our practical acquaintance with the criminal law of Guernsey has been chiefly derived from the performance of our duties as Jurats since our election.

2. The Royal Court, the only tribunal which exercises criminal jurisdiction in the Island, consists of the Bailiff and twelve Jurats. The constitution of this Court, in its present form, is supposed to have originated in the reign of King John; and its authority has been repeatedly recognised and confirmed in the Royal Charters of the Island. The jurisdiction of the Bailiff and Jurats extends to all offences arising in the Island, excepting Treason, Coining and assaulting the Bailiff and Jurats when exercising their office: of these three cases the Court has also the cognizance; but the adjudging of the punishment thereof is reserved to the Sovereign in Council.

3. "Terrien," according to the "Approbation," is peculiarly the authority referred to in respect to the criminal law: but, in the discussion of questions arising upon that law, other French commentators are quoted, as well as commentators and recent writers on the criminal law of England.

4. When a party is suspected of having committed an offence, the first step taken for the purpose of bringing him to justice is to give notice to a constable, who, of his own authority or in consequence of directions from the Bailiff or Crown officers, is to take means for producing him before the Court. In the event of the party being put into custody, the constable is bound, within twenty four hours, to give information of the particulars of the case to the Bailiff and Crown officers, and to receive his instructions from them regarding the disposal of the party.

5. "La Cour Ordinaire," or, as it is also called, "La Cour du Quartier," (consisting of the Bailiff and four Jurats, two of them with the Bailiff forming a quorum) assisted by the Crown officers, before whom the accused is brought, does in some cases exercise a summary jurisdiction. By this Court, when sitting "en Police Correctionnelle," ordinary police and other such cases are disposed of summarily.

6. Where there is no exercise of summary jurisdiction, the proceedings, preliminary to the accused being put on his trial, are taken in private before "la Cour Ordinaire." The Court hears the statement of the informant, and puts such questions as may be necessary for the purpose of ascertaining that the facts to which the witnesses are to depose are relevant to the charge. An oath is then administered to the witnesses; and the Court proceeds to take their examinations. If sufficient ground appear, the charge against the accused is put into a definite written form. It is then, he having been called in, distinctly read to him; and he is informed that he is to be interrogated thereon, and that his answers will be used at his trial, supposing him to be committed. The

"Interrogatoire," *not* on oath, is then taken in writing. At this stage the accused has the privilege of procuring, by means of the constable, the attendance of any witnesses he may indicate, to be heard on his behalf. When the Court is finally satisfied that the accused is to be put on his trial, it authorises the Crown officers "d'informer contre lui." The steps taken for securing the appearance of the accused to undergo his trial are by committing him to prison, or requiring bail, if the offence is bailable; the "caution juratoire' of the accused, that he will appear when required, being in some cases deemed sufficient.

7. When the jurisdiction is not of a summary kind, the accused is tried before "la Cour Criminelle," or, as it is also called, "La Cour en Corps," composed of the Bailiff and seven Jurats at the least. The functionaries, who have sent the party to trial, are capable of acting as members of such Court.

8. The proceedings against the accused party are instituted with leave of the Court by the Crown officers acting as public prosecutors. The Court may, at the instance of the Crown officers, allow such proceedings to be abandoned at any time before trial, "au petit criminel," and before "confrontation," "au grand criminel." The distinction between such cases is explained in No. 17. After abandonment of proceedings, the Crown officers are at liberty to apply again to the Court for leave "d'informer" de novo against the accused.

9. It will appear from No. 6 at what stage the charge against the party accused is put into a definite written form. After the "Interrogatoire" has been taken, it is not competent to vary the form or substance of the charge without the consent of the accused; but the proceedings may be abandoned, and others commenced, with consent of the Court.

10, 11, 12, 13. Under the plea of "Not guilty," the utmost latitude is allowed to the accused to dispute both the facts and their relevancy.

14. The party charged is entitled to the assistance of one counsel (who in the Island fulfils the duties of Attorney as of Counsel), whether such party is or is not in a condition to remunerate such counsel. The party himself selects his adviser, who may be assisted by one or more counsel.

15. Both the accusing and the accused party have the means of compelling the production of evidence, oral and documentary, at any stage of the proceedings, through the Crown officers, who summon and procure the evidence of not only the witnesses on the part of the prosecution, but also on that of the defence: and such witnesses are also all equally paid for their attendance at the expense of the Crown. The number of witnesses, who may be called by either party in the investigation previously to committal, as mentioned in No. 6, is unlimited. Only twelve on either side are allowed at the trial.

16. As has already appeared, evidence is first received previously to putting the charge against the accused in a definite written form. It is taken in the mode and in the presence stated in No. 6.

17. If the accused be proceeded against "au grand criminel," which is the case when the offence is *felony*, which may be followed with the punishment of death or transportation to a penal settlement, or banishment from the bailiwick for seven years or upwards, the whole of the evidence produced against him, subsequently to his committal, is taken in writing by "la Cour ordinaire" in the absence of the accused. He is first allowed to hear that evidence, when an opportunity of "confrontation" with the witnesses and of examining them by his counsel is afforded him before the same Court. If the accused be proceeded against "au petit criminel," which is the case when the offence is *not* felony, and involves a lesser punishment than those before enumerated, he first hears the evidence when it is produced against him at the trial before "la Cour criminelle."

18. In proceedings "au grand criminel," the party accused is allowed to produce evidence before "la Cour ordinaire" to meet that produced against him, after the completion of the examination on the part of the accusing party: and such evidence on behalf of the accused forms part of the evidence used on the trial. "Au petit criminel" the accused produces his evidence, vivâ voce, at the trial and not before.

19. "Au grand criminel," at the time of "confrontation," of which notice is given to the accused by summons, which is required to contain the names of the witnesses to be confronted, and "au petit criminel," at the trial, he is allowed to question the witnesses produced against him to any extent.

20. "An grand criminel," after copies of the evidence, as well on the part of the accusing as of the accused party, have been given out by the clerk of the Court, called the Greffier, to the Crown officers and to the accused, no fresh evidence can be produced by either party. "Au petit criminel," the evidence is confined to the witnesses sworn at the commencement of the trial.

21. "Au grand criminel," the whole of the evidence, subsequent to the committal, is taken down in writing. Neither "au grand criminel" nor "au petit criminel" is the evidence prior to the committal necessarily taken down in writing.

22. "Au grand criminel," as has been already shewn, the evidence which is taken down in writing is afterwards used at the trial; and upon that evidence alone the case is decided. It is not allowable, either against or on behalf of the accused party, to give proof that the written evidence does not correctly represent the whole of what was deposed to, the "Récolement et confrontation" having previously taken place. "Au petit criminel," the evidence is wholly vivâ voce.

23. The counsel for the party charged has unlimited privilege as to being heard on questions of fact or law, and examining witnesses.

24. The party accusing has the privilege of being heard last.

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25. Both the law and the fact are decided by the Bailiff and Jurats after hearing the "conclusions" of the Crown officers. The Bailiff sums up the case, but does not vote; at least his vote does not count, unless the opinions of the Jurats are equally divided.

26. The judgment is awarded by the Bailiff and Jurats.

27. The Court has power to adjourn and suspend its proceedings for causes, such as absence of a witness duly summoned, provided it be previously to the commencement of the trial. The trial once commenced, if the case cannot be disposed of in one day, the Court may adjourn.

28. In answering this question, it may be well to give the following more connected detail of the incidents to accusation and trial.

"Au petit criminel," the accused, having been, by "la Cour ordinaire," ordered for trial, as stated in No. 6, is served with a summons, at the suit of the Crown officers, containing the accusation against him, which must be referred to and be strictly in accordance with the charge upon which the accused has given his "interrogatoire." Appearing before the Court, the accusation is read to him and he pleads Guilty or Not Guilty. The plea is recorded; and the Court rules that the Crown officers "prouveront les fins de leur action." The accused also chooses his counsel. Two days at least before the trial, the Crown officers cause the accused to be served with another summons similar to that preceding, with the addition of a statement of the accused having pleaded and chosen his counsel. As has been already said, the Crown officers also cause the witnesses, both in support of the accusation and of the defence, to be summoned, being furnished with lists for the purpose. On the day of trial, proceedings commence with reading the accusation. The witnesses on both sides are called and sworn; and, after the swearing, no other can be called. Witnesses may be challenged by either side. The accusation and the "interrogatoire" are then read and the witnesses examined. The counsel of the accused, thereupon, makes his speech in defence. The Crown officers then address the Court, ending with their "conclusions," as public prosecutors between the Crown and the accused, with regard to the verdict of Guilty or Not Guilty, and to the degree of punishment to be inflicted on him if Guilty. The Bailiff sums up and collects the opinions of the Jurats, as stated in No. 25.

"Au grand criminel," the accused, having been, by "La Cour ordinaire," ordered for trial, as stated in No. 6, is served with a summons, at the suit of the Crown officers, containing the accusation against him; and on the next Court day he is called upon to plead Guilty or Not Guilty, and to choose a counsel. Days are then appointed for the examination of witnesses in support of the prosecution. The examination takes place in private before "la Cour ordinaire." The witnesses, separately introduced, are sworn and examined by the Crown officers; and the questions and answers are taken down in writing by the Greffier. When all the witnesses for the prosecution have been examined, another day is appointed by the Court for the "Récolement," being the re-examination of the witnesses or the confirmation of their evidence. On this occasion the witnesses are called in singly; their depositions are read to them; and they are required to declare whether they confirm what they have deposed to, or whether they have any thing to add or to change. The Court may also further pursue the examination by proposing additional questions. The next proceeding is the "Confrontation," already alluded to, at which the accused is present, assisted by his counsel. The witnesses are called in singly; and the accused is asked whether he objects to the witnesses, a list of which has been previously furnished him. If objection be made, a note of it is taken; and it remains to be decided by "la Cour criminelle" at the trial. The depositions, which, till lately, were at the "Confrontation" first communicated to the accused, but which, by an Order in Council of the 19th June, 1844, are now to be delivered to him on the morning of the "Confrontation," are read by the Greffier, and the counsel of the accused puts such counter questions as he may think proper. The Court may also again interrogate the witnesses. The whole of the proceeding, as before, is taken down in writing. After the "Confrontation" is terminated, the Court inquires of the accused whether he is desirous of producing witnesses on his behalf; and, if so, he is to state by his counsel the purport of the evidence he proposes to give, in order that the Court may judge of its relevancy to the case. If leave of the Court be given, another day is then appointed for the examination of the witnesses of the accused. That examination takes place, as before detailed, and is put into writing. When all the examinations have taken place, an authenticated copy of the whole evidence is furnished by the Greffier to the Crown officers, and another to the counsel of the accused. On the day of trial, which is before "la Cour Criminelle," the accusation and the "Interrogatoire" are first read. If the counsel of the accused has challenged any of the Witnesses, he then justifies the challenge. The Court judges of its validity. The depositions of the witnesses on both sides are next read; and the counsel of the accused enters on his defence. The Crown officers follow and give their "Conclusions." The Bailiff sums up, and proceeds to take the individual opinions of the Jurats, as in cases "au petit criminel."

29. The accused party has no power of appeal in any form of criminal proceedings.

30. When Judgment is finally against the accused party, if he be condemned to death, the sentence is carried into effect in presence of the Crown officers by means of the Sheriff. Saturday is the usual day of trial: and the day appointed by the Court for execution is, at the earliest, on the following Friday, that time, however, being extended in case of application made on the part of the convict. When the sentence is transportation to a penal settlement, the Bailiff reports the case to the Secretary of State for the Home Department, through whose intervention the convict is transported to such settlement as

Her Majesty is pleased to direct. When the sentence involves the forfeiture of property real and personal to Her Majesty, as death or transportation to a penal settlement or banishment from the Bailiwick for seven years or upwards, the Crown officers take means to possess themselves of it.

31. The Crown officers and the Greffier, with their answers, will furnish the forms used at the various steps of the proceedings which are the subject of the preceding questions, and will also give the oaths taken by the witnesses and by the members of the Court on their entering into office. The Court is *not* sworn in each cause.

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32. The Bailiff and the Crown officers (the "Procureur" and the "Comptrolle") are appointed by the Crown during pleasure. The Jurats are elected for life by the Elective States of the Island, composed of the Bailiff, the Jurats, the Rectors of Parishes appointed to their livings by the Crown, the Queen's "Procureur," and the members of the Douzaines or Municipal Councils, including the constables of the Town and nine Country Parishes, who manage the parochial affairs, and of the four Cantonal Douzaines of the Town, making in all 222. The members of the Douzaines, parochial and cantonal, are themselves elected by the ratepayers of their respective parishes, and hold their offices for life. The constables, of whom there are two in each parish, are also elected by the ratepayers; they preside over the Douzaines or Municipal Councils of their parishes, and are treasurers of the public money, as well as at the head of the Police in their respective parishes. The election of Constable holds for three years; but they are entitled to be relieved from service at the end of one year. The Constables after service are eligible as Douzainiers, such service being indispensable as a qualification to the Douzaine. Both Constables and Douzainiers are removable by judgment of the Court if sufficient cause be shown. The Sheriff, like the Jurats, is chosen for life by the Elective States. With regard to the Jurats, they can only be removed by order of the Sovereign in Council.

33, 34. We have not at this moment any suggestions to make regarding any defects in the present system of the criminal law of the Island: but, as Members of the Court, we shall be anxious, in unison with its other Members, to give our best consideration to any part of that system in which it may appear to Her Majesty's Commissioners that improvements may be made, and to the means which at any time may be suggested for carrying such improvements into effect.

THOS. LE RETILLEY,
THOS. DE HAVILLAND,
THOS. ANDROS.

Guernsey, 20th July, 1846.

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## No. 6.

*Answers of Charles De Jersey, Esq., Her Majesty's Procureur at Guernsey, to the first Series of Questions.*

Charles De Jersey, Esqrs., Procureur de la Reine. 18 July, 1846.

1. I was called to the Bar in 1806, was appointed Comptroller or Solicitor General in 1822, and Procureur or Attorney General in 1830.

2. The Royal Court alone exercises criminal jurisdiction in this Island. Its jurisdiction is very ancient: it is supposed to have originated in the Constitutions of King John, and extends over all offences, save treason, false coining and laying violent hands on the Bailiff or Jurats while in the execution of the duties of their office: in these the Royal Court has the examination into the offence itself; but the punishment of the offenders is reserved to the Crown.

3. "Terrien;" our book of Laws, the "Approbation des Loix,;" Orders in Council; Mr. Le Marchant's Commentaries; Common Law, and English and French Criminal Law Authorities.

4. Information is given to one of the constables or of the assistant constables of the parish, who, according to the gravity of the charge, either takes the accused into custody, or orders him to appear before the Court on the following Thursday: and, in either case, the constable is bound to report the matter, without loss of time, to the Chief Magistrate and to the Crown lawyers.

5. All petty offences are disposed of summarily by the Ordinary Court, composed of the Bailiff or his Lieutenant and of two Jurats at the least, who sit every Thursday and oftener, if required, as a Court of Correctional Police.

6. Witnesses are examined on oath in private by the Ordinary Court in the presence of the Queen's Law officers, after which, if there be sufficient evidence, the charge or accusation is put into writing and read to the accused, and his interrogatory is taken thereupon and put into writing. His appearance before the Court is then secured either by committing him to prison for trial, by admitting him to bail, or, in trivial cases, by taking his "caution juratoire," that he will answer to the accusation which shall be entered against him.

7. He is tried before the Criminal Court, constituted of the Bailiff or his Lieutenant and seven Jurats at the least. The functionaries who have sent the party to prison are capable of acting as members of that Court.

8. The constable produces the party and the witnesses before the Court in the first instance: the act of commitment for trial directs the Crown lawyers to prosecute; who then, as public prosecutors, indict the prisoner and cannot "per se" cause the proceedings to be abandoned: but, should errors be discovered which might prove fatal to the prosecution, they may, with the sanction of the Court, abandon the proceedings and commence a prosecution "de novo" in an amended form.

9. The charge is put into a definite form in writing as soon as witnesses have been examined

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verbally in private by the Court, and before the prisoner is interrogated thereupon. After commitment, it is not competent in the Queen's Law officers, who are public prosecutors, to vary the form or substance of the charge: but, as already observed, should any error be discovered which might be fatal to the prosecution, the Queen's Law officers, with the sanction of the Court, may abandon the proceedings and recommence the prosecution in an amended form, in which case the prisoner must be interrogated "de novo," and is free to make what answers and defence he may think proper.

10 and 11. If the party charged admits the facts, but denies their relevancy to support the charge, or if he simply denies the facts, the form of proceeding is the same. On being called upon to plead Guilty or Not guilty, he denies in general terms having committed the crime in the words following, "a fait niance d'avoir commis le dit crime et a fait choix de l'avocat" (the name) "pour son conseil." If the prisoner has admitted a part and denied a part of the charge in his interrogatory, or has otherwise qualified his answers, it is usual, after the words "commis le dit crime," to add, "*au reste se référe à son interrogatoire.*"

12. If the party charged confines himself to a denial of the relevancy of the charges, he is not thereby concluded as to the facts.

13. If the party charged confines himself to a denial of the facts, he is not thereby concluded as to their relevancy.

14. The party charged is entitled of right to the assistance of one counsel, whom he selects from among the Advocates: and of late years, in some instances, the Court has, at the prayer of the accused, allowed a second advocate to assist in the defence. Whether the party charged be able or not to defray the expense he is equally entitled and of right to legal assistance.

15. The constable, on producing a prisoner before the Court, warns all the witnesses to attend, both those against and those for the prisoner, who are punishable by fine or imprisonment for non-attendance: and, after commitment, the Queen's Law officers, as public prosecutors, compel the production of evidence oral or documentary, as well for the prosecution as for the defence, and, in both cases, at the expense of the Crown.

16. Evidence is first received before the prisoner is committed. It is taken in private and verbally by the Ordinary Court, composed of the Bailiff or his Lieutenant and of two Jurats at the least.

17. The party, if accused au Grand criminel, (felony), is allowed to hear the evidence at the "Confrontation," a copy whereof has been delivered to him by the Queen's Greffier on the morning of that day. In cases of misdemeanour, he hears it at the trial.

18. If accused of a misdemeanor, the accused is allowed at the trial to produce evidence to meet the evidence produced against him; if au "grand criminel," he must, immediately after the "Confrontation," state the facts on which he wishes to have evidence and name his witnesses. If the Court considers the facts pertinent, leave is granted and the witnesses are examined "a futuro," and their depositions are added to the proceedings.

19. In cases of misdemeanor, the party accused is allowed to question the witnesses produced against him on the day of trial immediately after they have been examined by the Queen's Officers. In cases au "Grand Criminel," he examines them at the Confrontation, after their depositions and the "récolement" have been read to them in his presence, and in both instances on every part of the accusation.

20. In cases of misdemeanor there is no stage earlier than the "évocation des témoins" on the day of trial, after which fresh evidence may not be produced either for or against the party accused. In cases "au Grand criminel," the Queen's Law officers cannot produce fresh evidence "à charge" after the "confrontation;" but the prisoner may, as already observed in answer to question 18th, produce evidence (gallicé "témoins justificatifs") after the "Confrontation."

21. In cases of misdemeanor no evidence is taken down in writing: but in cases "au Grand criminel" all the evidence after the commitment ought to be taken down in writing; but of late years, in the lighter cases, the Court has allowed the witnesses to be heard on the day of trial "vivâ voce," as in cases of misdemeanor.

22. In cases of misdemeanor evidence is never taken in writing; in cases au "Grand Criminel," where all the evidence subsequently to the commitment is taken in writing, the witness at the "Récolement" is asked whether he has anything to add to or to diminish from his former deposition; and he is at full liberty either to add or to diminish; and his answer is recorded. He is then confronted with the prisoner in presence of the Queen's Law officers: his evidence is read in the presence of the prisoner, and is open to cross-examination.

23. The counsel for the party charged has the privilege of being heard on all questions of law and of fact, and may examine witnesses on every point connected with the accusation.

24. After all the witnesses for the prosecution and defence have been examined "vivâ voce," if the case be a misdemeanor, or after all the depositions for the prosecution and defence have been read, if the case be "au Grand Criminel," the prisoner is heard in his defence: after which, the Queen's Law officers, who may be considered as assessors to the Court, are bound to give their conclusions, without favour or partiality, for or against the prisoner, and to ask for the judgment which they conscientiously believe upon the examination of the whole matter the Court ought to give.

25. The functionaries deciding the law and the functionaries deciding the fact are the same, the Criminal Court, which in all matters of indictment is composed of the Bailiff or the Lieutenant Bailiff and seven Jurats at the least, except the prisoner consent to have his case decided by the Bailiff or Lieutenant Bailiff and six Jurats, which, in cases of small importance, has sometimes been done.

26. Judgment is awarded by the Criminal Court.

27. After the trial has commenced, the Court may adjourn the proceedings "de die in diem:" before the trial, the Court may suspend proceedings for a reasonable cause.

28. In all cases of crime, as already observed, the person charged and the witnesses are in the first instance produced before the Court by a constable or by an assistant constable: and if, on the examination of the witnesses, which takes place "vivâ voce" in private before the Court and in the presence of the Queen's law officers, there appears sufficient cause to put the prisoner on his trial, the accusation is put into writing and an Act of Court is passed committing him to prison for trial, in which case the commitment is as follows. "La Cour, après avoir pris par écrit l'interrogatoire du dit" (prisoner's name) "et entendu des témoins dignes de foi, a ordonné qu'il sera constitué prisonnier dans la prison publique pour que les Officiers de la Reine informent contre lui." Or admitting him to bail, in which case the following words are added to the commitment. "Sauf à lui de donner caution de £——" (the amount) "qu'il se présentera toutes fois et quantes qu'il en sera requis par les Officiers de la Reine." Or, in slight cases, admitting him to promise on oath to answer, in which case the Act of Commitment after the words "prison publique" is as follows. "Sauf à lui de donner sa caution juratoire qu'il se présentera toutes fois et quantes qu'il en sera requis par les Officiers de la Reine."

App. No. 1, A. and B.
App. No. 2, A. and B.
App. No. 2, I.

The Queen's law officers, being duly authorised to do so by the Act of Commitment, indict the prisoner by serving him with an "ajour," or summons for the next Court day, which "ajour" contains the accusation on which the interrogatory has been taken: and, if the charge be "au Grand Criminel," that is, for a crime "de quoy l'homme doit et peut perdre vie ou membre," they indict him "à se voir ajuger aux peines et punitions imposées par les loix pour avoir félonieusement, &c., &c." If the charge be for a misdemeanor, which makes the perpetrator liable to corporal punishment, they indict him "à se voir ajuger à telle peine, punition ou châtiment corporel que la Cour trouvera condigne." And, if for a misdemeanor punishable by fine or imprisonment, they indict him "à se voir ajuger à telle peine, punition ou amende." On the Court day for which the prisoner is summoned, the accusation against him is read, and he is asked, whether he is Guilty or Not Guilty. If he pleads *Guilty*, he is told to choose an Advocate for his counsel: and the Act of Court is as follows. "Remise à Samedi pour entendre les témoins et les conclusions des officiers de la Reine après que le dit" (prisoner's name) "a confessé avoir commis le dit crime et a fait choix de l'avocat" (the name) "pour son conseil." But, if he pleads *Not guilty*, the act of the Court is as follows. "Acteurs prouveront après que le dit" (prisoner's name) "a fait niance d'avoir commis le dit crime, et a fait choix de l'avocat" (the name) "pour son conseil." Should the prisoner in his interrogatory have denied part and admitted part, or should he have qualified his admission or denial of the charge, it is usual, though not absolutely necessary, after the words "le dit crime," to add "et au reste se référe à son interrogatoire, et a fait choix de l'avocat" (name) "pour son conseil."

App. No. 2, G. and H.

After the prisoner has chosen his counsel, the proceedings "au Grand Criminel" differ from those in cases of misdemeanor. In cases of misdemeanor, a second "ajour" or summons for the next Criminal Court day is served on the prisoner at the instance of Her Majesty's law officers, who subpœna all witnesses both for the prosecution and the defence at the expense of the Crown: and on the day appointed they are examined vivâ voce, and the trial takes place. But in cases "au Grand Criminel," after the Queen's officers are directed to prove and the prisoner has chosen his counsel, both which are done by one and the same Act of Court, the Queen's law officers subpœna the witnesses for the prosecution for any day the Court may appoint; they are examined before the ordinary Court, composed of the Bailiff or his Lieutenant and of two Jurats at the least, in the presence of Her Majesty's law officers; and their evidence is taken down in writing by the Queen's Greffier.

App. No. 2, E.
App. No. 1, D.
App. No. 1, E.
App. No. 1, F.

The witnesses are again subpœnaed for a subsequent day pour être "récolés;" which is done as follows. Each witness is called separately before the Court in private, in the presence of Her Majesty's law officers, and is duly sworn to declare the truth, the whole truth, and nothing but the truth, in the matter then before the Court; after which his deposition previously taken is read to him, and he is asked if he have anything to add to or to diminish from his deposition; and his answer is put into writing.

App. No. 1, G.
App. No. 1, H.

After the "récolement," the witness, who has been previously subpœnaed for that purpose, is confronted with the prisoner. This is done as follows. He is called into Court in the presence of Her Majesty's law officers and of the prisoner and his counsel: the prisoner is then asked if he objects to the witness: if he does, he states for what reason; and a note in writing is taken of the objection, which is afterwards decided upon by the "Cour en Corps," composed of the Bailiff or his Lieutenant and seven Jurats at the least. If he does not object to the witness this is also noted. The witness is then sworn; and his deposition and "récolement" are read: he is then asked if he knows the prisoner at the bar, or if he has referred to him; he is asked, whether the prisoner at the bar is the person he has referred to in his deposition under the name or designation of (as the case may be); and his answer is put into writing; the witness is then open to cross-examination by the prisoner and his counsel.

App. No. 1, I.
App. No. 1, K.

When the "confrontations" are finished, if the prisoner has advanced any fact tending to prove his innocence, the Court is bound to mention it to him, and also to ask him if there are any facts he wishes to prove and any witnesses he wishes to have examined. If he answer in the affirmative, he is told to mention the facts and to name the witnesses. If the facts are considered pertinent by the Court, leave is given to have the witnesses named examined, who are thereupon subpœnaed by the Queen's officers at the expense of the Crown for a future day, when they are examined and their deposition put into writing by the Greffier before the Ordinary Court, and in the presence of the prisoner and his counsel, and of the Queen's law officers.

When all the examinations are completed, the Queen's law officers again summon the prisoner for his trial. When all the evidence, as well for the prosecution as for the prisoner, has

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been read, the Counsel of the prisoner is heard in his defence; after which the Queen's law officers, whose duties are very different from those of a counsel for the prosecution in England, give their conclusions, in which they are bound to state the matter fairly and impartially, and to ask for such a judgment as they conscientiously believe the Court ought to give.

Should the Court consider the prisoner a fit object for Royal clemency, the fact is recorded in the judgment, which is pronounced by the Bailiff or his Lieutenant; and the interrogatory and evidence are transmitted to the Secretary of State with the Court's recommendation for mercy: this is, probably, the chief reason why, in cases "au Grand Criminel" which are in the jurisdiction of the Court, the evidence is put into writing.

App. No. 1, N.

In the three cases of "treason," "false coining," and "laying violent hands on the Bailiff and Jurats while in the execution of the duties of their office," the punishment of which is reserved to the Crown, all the proceedings in Guernsey are of necessity in writing.

Besides proceedings by indictment, it may be necessary to mention,—

App. No. 3.

1. That, as already observed, in answer to question 5, all petty offences are disposed of summarily by the Ordinary Court, sitting as a Court of Correctional Police. In these cases the constable informs the accused of the nature of the charge and requests him to give him the names of the witnesses he may require to have called for his defence; the constable then orders the accused and warns the witnesses, both for the prosecution and the defence, to be at Court on the following Thursday, when the matter is examined into and disposed of. The punishment awarded by the Ordinary Court, sitting as a Court of "Police Correctionnelle," never exceeds a moderate fine, or a month's imprisonment. In cases in "Police Correctionnelle" no costs are awarded; neither do the witnesses receive anything for their attendance.

App. No. 4, A. B. and C.

2. That criminal actions for penalties for the infringement of Acts of Parliament or of Ordinances are entered by both or by one of the Queen's Law officers, either "ex officio" or as adjoined to the informer, if there be one: and that, by an Order in Council of the 19th June 1844, fines, not exceeding Thirty Livres tournois, (2*l.* 2*s.* 1½*d.* stg.), may be sued for before the Ordinary Court at any time. Before the emanation of that Order such actions could only be brought before the "Cour en corps," sitting as a Criminal Court and during term.

App. No. 5, A.

3. That an action for libel or slander is entered by the person aggrieved, to whom one of the Crown Lawyers is adjoined by act of Court, the other being adjoined to the defendant, whence these causes are called "causes en adjonction." These actions are decided by the "Cour en corps," sitting as a Criminal Court and during term, and the punishment is an "amende honorable," or a fine, or both, to the party aggrieved, and a small fine to the Crown. Actions

App. No. 5, B. and C.

for assault and battery may be entered by the party aggrieved, which are proceeded with in a precisely similar manner as those for libel or slander. Actions en "Clameur de Haro" or en "Nouvelle Dessaisine," i. e. disturbance of real property, are brought before the Criminal Court. In these, one of the Crown Lawyers is adjoined to the Plaintiff, and the other to the Defendant "ab initio."

29. By the Law of this Island there is no power of appeal in criminal proceedings.

30. If judgment be finally against the accused party, the Sheriff or the Deputy Sheriff carries it into effect. If the punishment be death, flogging, or the pillory, the Queen's Law officers and the Queen's Greffier must be present. If the prisoner be condemned to death or to banishment from the Island for seven years or upwards, his property real and personal is forfeited to the Crown or to the Lord of the Manor and taken possession of accordingly: and, if condemned to be transported to a penal settlement, due notice thereof is given to the Secretary of State; and the prisoner is detained in prison until the Sovereign's pleasure be known.

31. Forms of proceedings are sent herewith in an Appendix. No. 1. In cases "au Grand Criminal." No. 2. In cases for Misdemeanors. No. 3. In cases in Correctional Police. No. 4. In cases for Fines for infringement of Acts of Parliament or of Ordinances of the Court. And 5thly. In cases of Libel, Slander, "Clameur de Haro," and "Nouvelle Dessaisine."

As authentic copies of the oath taken by witnesses, and of the oaths of office of the Bailiff, Jurats, Crown Lawyers, Constables and Assistant Constables have been extracted from the Books by Her Majesty's Greffier to be forwarded to the Commissioners, I beg leave to refer them to those copies: but, should they require another copy from me, I shall be happy to send it.

32. The Bailiff, the Crown Lawyers, and the Greffier are appointed by the Crown during pleasure: the Jurats and the Sheriff are elected for life by the Elective States of this Island, composed of the Bailiff, Jurats, Clergy, Queen's Procureur, Constables and Douzeniers, in all 222 votes.

The Constables, two in each Parish, are elected by the rate payers and sworn into office by the Royal Court. They serve gratuitously, are the heads of the Police, preside the municipal body, here called the Douzaine, and are the Parish Treasurers; they may continue in office three years, but after serving one year may insist on a new election.

The Assistant Constables, of which there are some in the town only, are chosen by the Constables and Douzeniers, are usually master tradesmen; and their term of service is the same as that of the Constables.

All the beforementioned functionaries are removable for misconduct.

33. The Royal Court has criminal jurisdiction over all the Bailiwick, which comprises the Islands of Guernsey, Alderney, Serk, Herm, Jethou and Lihou; the Alderney Court is composed of a Judge and six Jurats; at Serk the Court is composed of a Senechal only, who has power to imprison for 24 hours, or to inflict a fine of Three Livres Tournois (4*s.* 3½*d.*).

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All felonies and misdemeanors committed in those Islands are tried in Guernsey. Herm, Jethou and Lihou are very small islets never named in Acts of Parliament.

34. There are three defects in our proceedings, which, it appears to me, might easily be rectified.

1. The prisoner, in ordinary cases, does not know the names of the witnesses who are to be called against him, until the trial.

2. In cases au "Grand Criminal" a copy of the evidence is only given to the prisoner on the morning of the Confrontation.

3. A bare majority of one vote is sufficient to condemn a prisoner to death or to banishment for seven years or upwards, by which all his property real and personal is forfeited to the Crown, or to the Lord of the Manor.

4. It might, if practicable, be advisable that the functionaries who commit the prisoner should not, as at present, afterwards judge him.

Should our mode of proceeding be changed in this respect, notes of the depositions in all indictable cases ought, I think, to be taken by the Committing Court, and an authentic copy, at the expense of the Crown, be given to the Crown lawyers as public prosecutors, and another in a certain stage of the proceedings to the counsel for the prisoner. The present mode of taking evidence in writing au "Grand Criminal" might then, and probably with advantage, be abolished.

5. The number of witnesses, of which twelve only can now be called for the prosecution and twelve for the defence, might also be increased.

CHARLES DE JERSEY,
*H. M. Procureur at Guernsey.*

Guernsey, July 18, 1846.

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## APPENDIX No. 1.

Appendix No. 1. Proceedings "au Grand Criminel."

*Proceedings "au Grand Criminel."*

(A).—*Interrogatory.*

A la Cour Royale de l'Ile de Guernesey.

Le 5 Décembre, 1842, devant Monsieur le Juge Délégué, présens, Jean Hubert et Hillary Ollivier Carré, Ecuyers, Jurés.

George Faulkner, fils de George, de South Creek dans le Comté de Norfolk en Angleterre, ayant été ce jour produit devant la Cour par le ministère de M. Thomas Simon, Prevôt de l'Ile d' Auregny, étant accusé d'avoir, soit seul ou avec autre son complice ou autres ses complices, le 19 Août, 1842, ou environ, dans la paroisse de St. Martin en cette Ile, félonieusement commis le crime de faux, le dit Faulkner ou complices ayant à l'endos d'un billet à ordre, dont suit copie,

£50. St. Martin's, August 19, 1842.

Six months after date I promise to pay Mr. F. Mansell, Jun., or order the Sum of Fifty Pounds, for value received.

GEORGE FAULKNER.

endossé ou écrit ou rempli en tout ou partie les mots "Frederick Mansell, Jun.," à l'endos du dit billet, le dit endossement étant faux et simulé, et d'avoir le dit Faulkner, dans le dessein de frauder Messieurs Priaulx, Le Marchant, Rougier et Co. formant la compagnie dite Anglicé, "The Guernsey Banking Company," le 19 Août, 1842, dans une maison à la Grande Rue en la ville de Saint Pierre Port en partie occupée par la dite compagnie, félonieusement offert et négocié le dit billet à ordre avec le dit endossement, sachant le dit endossement être faux et simulé, à T. S. C. D. Utermarck, Ecuyer, un des gérans de la dite compagnie, ou à M. Charles Vaucour, commis de la dite compagnie, et ce, en remplacement de partie d'un autre billet dû par le dit Faulkner à la dite compagnie, et qui devenait dû le dit jour 19 Août, 1842, ou environ.

*Etant interrogé.*—S'il est coupable de la dite accusation?

*A répondu.*—I am not guilty, for if I had wished to defraud the Bank, I should not have remained in the Island after obtaining the money.

Un billet à order marqué "A," et dont suit copie,

£50. St. Martin's, August 19, 1842.

Six months after date I promise to pay Mr. F. Mansell, Jun., or order the sum of Fifty Pounds for value received.

GEORGE FAULKNER.

ayant été exhibé au prisonnier.

*Interrogé.*—Do you know the note of hand now exhibited to you?

*A répondu.*—Yes; it is of my handwriting.

*Interrogé.*—In whose handwriting is the endorsement, or the words "Frederick Mansell Jun." at the back of the said note of hand?

*A répondu.*—I believe in Mr. Mansell's.

*Interrogé.*—What makes you believe that the said endorsement is in the handwriting of the said Mr. Frederick Mansell, Jun.

*A répondu.*—Because I sent it to him in an enclosure, and it was returned to me endorsed.

*Interrogé.*—Did Mr. Mansell, previously to the 19th August, 1842, ever endorse notes of hand for you?

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*A répondu.*—Yes.

*Interrogé.*—When, and how many times?

*A répondu.*—Mr. Mansell, with whom I had dealings to the amount of 400*l.* to 500*l.*, on two or three occasions lent me his signature to obtain money at the Bank.

*Interrogé.*—Did you, on the 19th August, 1842 or thereabouts, offer and negociate the note of hand marked "A" and bearing the endorsement "Frederick Mansell Jun." to and with Mr. Utermarck, one of the Directors of the "Guernsey Banking Company," or to and with Mr. Vaucour, a clerk of the said Company?

*A répondu.*—Yes; I did.

*Interrogé.*—What value did you receive from the said Banking Company for the said note of hand?

*A répondu.*—I owed 60*l.* and interest to the said Bank, and I gave them the said note of hand on account, and paid them the remainder.

*Interrogé.*—You have stated you sent the note of hand marked "A" to Mr. Frederick Mansell Jun. and that it was returned endorsed, state by whom you sent him the said note?

*A répondu.*—I decline answering the question until my trial, when I shall produce the party by whom I sent the note.

*Interrogé.*—On or about the 3rd November, 1842, did you promise the Court of Alderney on oath that you would come to this Island and give the Bank of Messrs. Priaulx, Le Marchant, Rougier and Co. all the necessary information concerning the endorsement in question?

*A répondu.*—Yes.

*Interrogé.*—Did you shortly after the 3rd of November return to this Island?

*A répondu.*—I did.

*Interrogé.*—Did you call at the said Bank, or give them the promised information?

*A répondu.*—No, I did not; the ship in which I came from Alderney having arrived at eleven o'clock at night, when I was informed the Police was looking out for me; but the next morning I sent my agent, Mr. Boyd, to the Bank to say I was arrived, and, receiving no answer and finding Mr. Mansell was absent from the Island, I kept myself secreted a few days, and then returned to Alderney, where I had left my family, and where I was taken up on the 23rd November last, and subsequently sent here in the custody of the Sheriff.

*Interrogé.*—In what boat did you go to Alderney the last time?

*A répondu.*—In a boat from St. Sampson or the Vale; but I do not know the name of the boat or of the owner.

*Interrogé.*—What did you pay for your passage?

*A répondu.*—Two Pounds.

*Interrogé.*—At the time you left this Island for Alderney did you know there was a "décret de prise de corps" against you, and that the Police was looking for you?

*A répondu.*—I knew the Police was looking for me.

*Interrogé.*—Was the boat in which you went to Alderney called the Neptune?

*A répondu.*—I am not certain; it was an open boat, cutter rigged, and had Number 1. marked on the mainsail.

Collationné à l'original.

(Signé) JEAN NAFTEL, *Député Greffier de la Reine.*

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(B.)—*Commitment.*

A la Cour Royale de l'Ile de Guernsey.

Le 5 Décembre, 1842, devant Jean Guille, Ecuyer, Juge Délégué, présens Jean Hubert et Hilary Ollivier Carré, Ecuyers, Jurés.

George Faulkner, fils de George, de South Creek dans le comté de Norfolk en Angleterre, ayant été ce jour produit devant la Cour par le ministère de M. Thomas Simon, Prevôt de l'Ile d'Auregny, étant accusé d'avoir, soit seul ou avec autre son complice ou autres ses complices, le 19 Août, 1842, ou environ, dans la paroisse de Saint Martin en cette Ile, félonieusement commis le crime de faux, le dit Faulkner ou complice ayant à l'endos d'un billet à ordre dont suit copie,

£50. St. Martin's, August 19, 1842.

Six months after date I promise to pay Mr. F. Mansell, Jun., or order the sum of Fifty Pounds for value received.

GEORGE FAULKNER.

endossé ou écrit ou rempli en tout ou partie les mots "Frederick Mansell Jun." à l'endos du dit billet, le dit endossement étant faux et simulé, et avoir le dit Faulkner, dans le dessein de frauder Messieurs Priaulx, Le Marchant, Rougier et Co. formant la compagnie dite Anglicé "The Guernsey Banking Company," le 19 Août, 1842, dans une maison à la Grand Rue en la ville de Saint Pierre Port en partie occupée par la dite compagnie, félonieusement offert et négocié le dit billet à ordre avec le dit endossement, sachant le dit endossement être faux et simulé, à T. S. C. D. Utermarck, Ecuyer, un des gérans de la dite compagnie, ou à M. Charles Vaucour, commis de la dite compagnie, et ce en remplacement de partie d'un autre billet dû par le dit Faulkner à la dite compagnie, et qui devenait dû le dit jour 19 Août, 1842, ou environ. La Cour, après avoir pris par écrit l'interrogatoire du dit Faulkner et entendu des témoins dignes de foi, a ordonné qu'il sera constitué prisonnier dans la prison publique pour que les Officiers de la Reine informent contre lui.

(Extrait des Regîtres,)

JEAN NAFTEL, *Député Greffier de la Reine.*

(C.)—*Form of "Ajour" to Prisoner.*

Sergent ajournez George Faulkner, fils de George, de South Creek dans le Comté de Norfolk en Angleterre, prisonnier dans la prison publique, à Samedi prochain, devant Monsieur le Bailiff ou Monsieur son Lieutenant et Messieurs les Jurés, instance des Officiers de la Reine, à se voir adjuger aux peines et punitions imposées par les loix, pour avoir le dit Faulkner, soit seul ou avec autre son complice ou autres ses complices, le 19e Août, 1842, ou environ, dans la paroisse de Saint Martin en cette Ile, félonieusement commis le crime de faux, le dit Faulkner ou complices ayant à l'endos d'un billet à ordre dont suit copie,

£50. St. Martin's, Aug. 19th, 1842.

Six months after date I promise to pay Mr. F. Mansell, Junr., or order the sum of Fifty Pounds, for value received.

GEORGE FAULKNER.

endossé ou écrit ou rempli en tout ou partie les mots "Frederick Mansell Junr." à l'endos du dit Billet, le dit endossement étant faux et simulé, et avoir le dit Faulkner, dans le dessein de frauder Messrs. Priaulx, Le Marchant, Rougier and Co. formant la compagnie dite Anglicé "The Guernsey Banking Company," le 19 Août, 1842, dans une Maison à la Grande Rue de la Ville de Saint Pierre Port en partie occupée par la dite compagnie, félonieusement offert et négocié le dit billet à ordre avec le dit endossement, sachant le dit endossement être faux et simulé, à F. S. C. D. Utermarck, Ecuyer, un des gérans de la dite compagnie, ou à Monsieur Charles Vaucour, commis de la dite compagnie, et ce, en remplacement de partie d'un autre billet dû par le dit Faulkner à la dite compagnie, et qui devenait dû le dit jour 19e Août, 1842, ou environ, et leur payer leurs dépens.

(Signé) { CHS. DE JERSEY, *Procr. de la Reine.*
J. T. DE SAUMAREZ, *Cle. de la Reine.*
JAS. BARBET, *Sergt. de la Reine.*

Ce 8e Décembre, 1842.

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(D.)— *A la Cour Royale de l'Ile de Guernsey.*

Le Dix Décembre, 1842, devant Jean Guille, Ecuyer, Juge Délégué, présens Jean Le Messurier, Jean Hubert, Ecuyers, Messire William Collings, Hilary-Ollivier Carré, Frederic Mansell, Thomas William Gosselin, Thomas Le Retilley, Harry Dobrée, et Thomas Fiott De Havilland, Ecuyers, Jurés.

Les Officiers de la Reine prouveront les fins de l'action qu'ils ont contre George Faulkner, fils de George, de South Creek dans le Comté de Norfolk en Angleterre, prisonnier dans la prison publique, à se voir adjuger aux peines et punitions imposées par les loix, pour avoir le dit Faulkner, soit seul ou avec autre son complice ou autres ses complices, le 19e Août, 1842, ou environ, dans la paroisse de Saint Martin en cette Ile, félonieusement commis le crime de faux, le dit Faulkner ou complices ayant à l'endos d'un billet à ordre dont suit copie,

£50. St. Martin's, Aug. 19th, 1842.

Six months after date I promise to pay Mr. F. Mansell, Junr., or order the sum or Fifty Pounds for value received.

GEORGE FAULKNER.

endossé ou écrit ou rempli en tout ou partie les mots "Fredc. Mansell, Junr." à l'endos du dit billet, le dit endossement étant faux et simulé, et avoir le dit Faulkner, dans le dessein de frauder Messrs. Priaulx, Le Marchant, Rougier & Co., formant la Compagnie dite Anglicé "The Guernsey Banking Company," le 19e Août, 1842, dans une maison à la Grande Rue de la Ville de Saint Pierre Port en partie occupée par la dite compagnie, félonieusement offert et négocié le dit billet à ordre avec le dit endossement, sachant le dit endossement être faux et simulé, à T. S. C. D. Utermarck, Ecuyer, un des gérans de la dite compagnie, ou à Mr. Charles Vaucour, commis de la dite compagnie, et ce en remplacement de partie d'un autre billet dû par le dit Faulkner à la dite compagnie, et qui devenait dû le dit jour 19e Août, 1842, ou environ, et leur payer leurs dépens; après que le dit Faulkner a fait niance d'avoir commis le dit crime et a fait choix de l'Avocat Falla pour son conseil.

(Extrait des Regîtres,)

JEAN NAFTEL,
*Dté. Greffier de la Reine.*

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(E.)—*Form of Summons to Witnesses.*

Sergent ajournez Fredc. Mansell, Junr., Ecuyer, à prochain, devant Monsieur le Bailiff et Messieurs les Jurés, instance des Officiers de la Reine, à cause de preuve contre George Faulkner, fils de George.

(Signé) { CHS. DE JERSEY, *Procr. de la Reine.*
J. T. DE SAUMAREZ, *Conle. de la Reine.*
JAMES BARBET, *Sergt. de la Reine.*

Ce 12e Décembre, 1842.

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GUERNSEY.

*Answers to Questions.*

SERIES I.

Charles De Jersey, Esq., Procureur de la Reine.

Appendix No. 1. Proceedings "au Grand Criminel."

(F.)—*Depositions of Witnesses.*

Le 14e Décembre, 1842, devant Jean Guille, Ecuyer, Juge Délégué, présens Jean Hubert et Hilary Ollivier Carré, Ecuyers, Jurés.

Frederic Mansell, Junieur, Ecuyer, âgé de 34 ans ou environ, témoin des Officiers de la Reine en la cause qu'ils ont contre George Faulkner, fils de George, prisonnier dans la prison publique, aux fins d'acte du 10e Décembre, 1842, a déclaré par serment comme suit, savoir,

Un billet à ordre étiqueté "A." et dont suit copie,

£50. St. Martin's, August 19th, 1842.

Six months after date I promise to pay Mr. F. Mansell, Junr., or order the sum of Fifty Pounds, for value received.

GEORGE FAULKNER.

ayant été exhibé au dit témoin.

*Etant interrogé.*—Do you know the promissory note now exhibited to you, and, if so, declare all you know about it?

*A répondu.*—I never saw this bill before it was shown to me by Mr. Utermarck at the Bank, I believe, in October last, when I immediately told him that the signature "Fredk. Mansell, Junr.," at the back of the said bill was a forgery.

*Etant interrogé.*—Are the words or endorsement "Fredk. Mansell, Junr.," at the back of the said bill in your hand writing?

*A répondu.*—I declare most solemnly that they are not, that they are forged.

*Etant interrogé.*—Do you know in whose hand writing is the signature "George Faulkner" at the foot of the promissory note marked "A" now exhibited to you?

*A répondu.*—I think it is in the hand writing of George Faulkner the prisoner.

*Etant interrogé.*—Have you ever lent your signature to the prisoner for the purpose of obtaining money at the Bank?

*A répondu.*—Never. He has given me bills on the Bank which have been paid, but this was a long time ago.

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Monsieur James Frecker, agé de 50 ans, ou environ, témoin comme dessus en la dite cause, a declaré par serment comme suit, savoir:—

Un billet à ordre étiqueté "A" par la Cour, ayant été exhibé au témoin.

*Etant interrogé.*—Connoissez-vous le billet à ordre à vous présentement exhibé?

*A répondu.*—Non.

*Etant interrogé.*—Connoissez-vous l'écriture de Monsieur Frederic Mansel, Junieur?

*A répondu.*—Oui, je l'ai connue depuis son enfance, y ayant présentement trente ans que je suis dans son comptoir.

*Etant interrogé.*—La signature ou les mots ou endossement à l'endos du dit billet "Fredk. Mansell Junr." sont ils de l'écriture du dit Monsieur Mansell, Junieur?

*A répondu.*—Non, le k., à la fin du prénom Fredk., est différent de l'écriture de Monsieur Mansell, et la signature en entier n'est pas si ferme ni aisée, Anglicé "so bold," que la véritable signature de Monsieur Mansell.

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Monsieur Henri Boyd agé de 23 ans ou environ, témoin comme dessus en la dite cause, a declaré par serment comme suit, savoir:—

Un billet à ordre étiqueté par la Cour "A" ayant été exhibé au témoin.

*Etant interrogé.*—Do you know the promissory note now exhibited to you?

*A répondu.*—I think the prisoner shewed it to me the day he took it to the Bank, when I lent him ten pounds, being the difference between this bill and another of sixty pounds which I knew he owed the Bank, as, in the month of August, 1841, he called at my office and told me the Bank claimed payment of a sum he owed them, and asked me, if I thought they would take a bill with Mr. Mansell Junr.'s endorsement for sixty pounds, Mr. Mansell being willing to oblige him with the loan of his name for that amount, as he Faulkner had spent money with Mr. Mansell for beer to the amount of four or five hundred pounds. I said I thought they would, and accompanied him to the Bank, where, to the best of my recollection, Mr. Utermarck drew out a bill for sixty pounds, which Faulkner signed and took away to obtain Mr. Frederick Mansell's Junr.'s endorsement. On leaving Faulkner, he gave me the bill, requesting me, if I saw Mr. Mansell Junr., to get it endorsed, I did not see Mr. Mansell Junr. that day. On the following morning a boy called on me with a note from Faulkner requesting to know whether I had had the bill endorsed, and if not, desiring me to enclose it in an envelope addressed to Mr. Mansell Junr., and give it to the boy, as Mr. Mansell Junr. was going to Richmond or Lihou, and he wished Mr. Mansell to endorse the bill that day. Shortly after, Faulkner requested me to draw up a billet by which himself and wife acknowledged they owed sixty pounds to Mr. Mansell Junr., in order that it might be registered on their estate as a security for the bill given or to be given to the Bank. The billet I drew up did not bear interest, as Faulkner was to pay the interest of the advance to the Bank, the billet has never been passed, and I believe I have still got it in my possession. I wish to add, that from the moment I gave the bill drawn up by Mr. Utermarck to the boy, as already declared, I entirely lost sight of it and know nothing more about it. About six weeks or two months ago, Mr. Frecker, Mr. Mansell Junr.'s clerk, called on me, as Mr. Faulkner's attorney, and asked payment of an account of about thirty pounds; on my saying I had no funds in hand, he observed he must have a registry on Faulkner's property for that sum, on which I observed that, when he wrote to Faulkner on the subject, he had better request

him to consent to a registry for fifty pounds amount due to the Old Bank by Faulkner, and for which Mr. Frederick Mansell Junr. had remained security, on this, Mr. Frecker denied the existence of any such bill at the Bank; I however insisted that such was the case, but added that, as Mr. Mansell had probably done it to oblige Faulkner, it was likely he had not mentioned it, and requested Mr. Frecker to say nothing about it to Mr. Mansell, which he promised. This took place on a Friday, the next morning, however, Mr. Mansell called me out of court and told me the bill was a forgery, as he had never endorsed any bill for Faulkner. Mr. Mansell expressed himself in strong terms on the Bank having taken paper with his signature without his going there, and added that, if they did not prosecute Faulkner, he would. The morning after Faulkner's arrival in this Island in November last, at about eight o'clock, I received a letter from him, requesting me to call at the Old Bank for the purpose of arranging and paying the promissory note now in question, as he was on oath in Alderney to present himself at the Bank for that purpose. Having other occupations, I only saw Mr. Collings at about half past eleven o'clock, who was then accompanied by one of the Constables. I asked Mr. Collings if the matter could be arranged by paying the money or giving security, he said no, the matter being in the hands of the Police.

*Etant interrogé.*—Are you well acquainted with the prisoner George Faulkner's hand writing?

*A répondu.*—I have repeatedly seen it.

*Etant interrogé.*—Is the promissory note marked "A" by the Court now exhibited to you in George Faulkner's handwriting?

*A répondu.*—Yes decidedly.

*Etant interrogé.*—Did or do you know the boy to whom the bill was given by you as mentioned in your deposition?

*A répondu.*—No.

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T. S. C. D. Uttermark, Ecuyer, âgé de 56 ans ou environ, témoin comme dessus en la dite cause, a déclaré par serment comme suit, savoir:—

Un billet à ordre étiqueté "A." par la Cour, et dont suit copie,

£50. St. Martin's, August 19th, 1842.

Six months after date I promise to pay Mr. F. Mansell, Jun., the sum of Fifty Pounds, for value received.

GEORGE FAULKNER.

ayant été exhibé au témoin.

*Etant interrogé.*—Do you know the promissory note now exhibited to you, and if so, declare all you know about it.

*A répondu.*—I am one of the managers of the Guernsey Banking Company, and the note now exhibited to me was brought to the bank on the 19th August last by the prisoner, and given in part payment of another note of sixty pounds due that day by him to the Guernsey Banking Company, the balance, interest and commission, were paid in cash.

*Etant interrogé.*—Did the said bill marked "A.", at the time it was given to the Guernsey Banking Company in payment, bear the endorsement "Frederick Mansell Jun." now at the back of the said bill?

*A répondu.*—It did.

*Etant interrogé.*—Did you apprise Mr. Frederick Mansell Jun. of the circumstance?

*A répondu.*—We did not, it is not customary for us so to do.

*Etant interrogé.*—Was the promissory note of sixty pounds, for which you state the note marked "A." was given in part payment, endorsed?

*A répondu.*—It was in the same manner as the one now shown me.

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Mr. Charles Waterman Vaucour, âgé de 23 ans ou environ, témoin comme dessus en la dite cause, a déclaré par serment comme suit, savoir:—

*Etant interrogé.*—What is your name and profession, and where do you usually reside?

*A déclaré.*—I am a clerk in the employ of Messrs. Priaulx, Le Marchant, Rougier and Co., forming the company called the Guernsey Banking Company, and reside in the town of this Island.

Un billet à ordre étiqueté par la Cour "A." et dont suit copie,

£50. St. Martin's, August 19th, 1842.

Six months after date I promise to pay Mr. F. Mansell, Jun., or order the sum of Fifty Pounds, for value received.

GEORGE FAULKNER.

ayant été exhibé au témoin.

*Etant interrogé.*—Do you know the promissory note now exhibited to you, and if so, declare all you know about it?

*A répondu.*—It was brought to the bank by the prisoner on the 19th August last, and given by him to the bank in part payment of another note for sixty pounds due that day, the remaining ten pounds, and discount he paid in cash.

*Etant interrogé.*—Did the said note marked "A.", at the time it was given to the Guernsey Banking Company in payment, bear the endorsement "Frederick Mansell Jun." now at the back of the said bill?

*A répondu.*—It did.

GUERNSEY.

*Answers to Questions.*

SERIES I.

Charles De Jersey, Esq., Procureur de la Reine.

Appendix No. I.

Proceedings "au Grand Criminel."

*Etant interrogé.*—Was the promissory note of sixty pounds, for which you state the note marked "A." was given in part payment, endorsed?

*A répondu.*—It was endorsed in the same way as that exhibited to me.

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Sieur Servington Wyatt, âgé de 35 ans, ou environ témoin comme dessus en la dite cause, a déclaré par serment comme suit, savoir.

*Etant interrogé.*—What is your trade or profession, and where do you usually reside?

*A répondu.*—I am a farmer and live at St. Martin's.

*Etant interrogé.*—Declare all you know concerning the accusation of forgery against the prisoner now before the Court?

*A répondu.*—On the night of the prisoner's arrival from Alderney, he requested me to send a letter to Mr. Boyd, the law agent, which I did by a little boy named William Brice who lives with me. I told the boy to wait for an answer, and, on the boy's return, he told me the answer from Mr. Boyd was, that the person who wished to see him must be there at nine o'clock in the evening; the prisoner told me he wished to see Mr. Boyd, as Mr. Mansell was away from the Island, and if he showed himself before Mr. Mansell's return, he might be detained, and that he wanted Mr. Boyd to go to the bank; the constables came to me to look for the prisoner in the course of the day. Faulkner, who had been away all day, came in the evening, when I told him the constables were after him, on which he went away, and I have not seen him since.

*Etant interrogé.*—What is the age of the boy William Brice?

*A répondu.*—About thirteen.

(Collationné à l'Original,)

CHAS. LEFEBVRE, *Greffier de la Reine.*

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(G.)—*Form of Summons to Witnesses.*

Sergent ajournez Frederic Mansell Jun., Ecuyer à prochain, devant Monsieur le Bailliff ou Monsieur son Lieutenant et Messieurs les Jurés, instance des Officiers de la Reine pour être récolé et confronté à cause de preuve contre George Faulkner, fils de George.

(Signé) CHARLES DE JERSEY, *Procureur de la Reine.*
J. T. DE SAUMAREZ, *Cle. de la Reine.*
JAMES BARBET, *Sergent de la Reine.*

Ce 17e Décembre, 1842.

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(H.)—*Récolement.*

Le 19e Décembre, 1842, devant Jean Guillle, Ecuyer, Juge Délégué, présens Jean Hubert et H. O. Carré, Ecuyers, Jurés.

Frederic Mansell Jun., Esq., témoin des Officiers de la Reine en la cause qu'ils ont contre George Faulkner, fils de George, prisonnier dans la prison publique aux fins d'acte du 10e Décembre, 1842, ayant été fait convenir devant la Cour pour être récolé sur sa déposition prise devant la Cour le 14e Decembre, 1842, a déclaré par serment qu'il confirme et corrobore sa dite déposition, et qu'il n'a rien à y ajouter ou à y diminuer.

Mr. James Frecker, témoin des dits Officiers de la Reine en la dite cause contre le dit George Faulkner, ayant été fait convenir comme dessus, a déclaré par serment comme dessus, et ajoute.—"I am Mr. Frederic Mansell Junior's clerk: one morning I observed to him it was necessary to ascertain respecting the affairs of Faulkner, as he owed an accompt of about 30*l.* to Mr. Mansell. I then went to Mr. Henry Boyd (Mr. Faulkner's law agent) and applied to him to know how Faulkner's affairs stood, observing to him the necessity of registering Mr. Mansell's claim on Faulkner's property. Mr. Boyd replied I ought to include the bill at the Bank. I exclaimed what bill? He said Mr. Mansell's bill. I said what, of Faulkner's? Mr. Boyd said yes. I said that is impossible. Mr. Boyd said he had seen the bill, that it had been renewed, that the old bill was of 60*l.*, and that he had paid the 10*l.* difference between the two bills out of his own pocket. He (Boyd) further wished me to keep the matter secret, but I considered it my duty to communicate it to Mr. F. Mansell Jun., which I did, when he expressed great surprise and denied positively knowing anything of the bill. Mr. Mansell and myself left the office, and Mr. Mansell went to the Bank, and on his return told me that he had seen the bill, but the endorsement was not his signature. I wish to add, that three or four years ago the prisoner gave us several bills which Mr. Mansell paid to the Commercial Bank, having endorsed them as a matter of course; these bills must have been taken up by the prisoner when due, who by those means must have obtained Mr. Mansell's signature."

Monsieur Henri Boyd, témoin des dits Officiers de la Reine en la dite cause contre le dit Faulkner, ayant été fait convenir comme dessus, a déclaré par serment comme dessus, excepté "that I am a law agent, and that it was in that capacity I acted for the prisoner, and knew nothing of him until I acted for him professionally."

T. S. C. D. Utermarck, Ecuyer, témoin des dits Officiers de la Reine en la dite cause contre le dit George Faulkner, ayant été fait convenir comme dessus, a déclaré par serment comme dessus.

Mr. Charles Waterman Vaucour, témoin des dits Officiers de la Reine en la dite cause contre

le dit Faulkner, ayant été fait convenir comme dessus, a déclaré par serment comme dessus.

Sieur Servington Wyatt, témoin des dits Officiers de la Reine en la dite cause contre le dit George Faulkner, ayant été fait convenir comme dessus, a déclaré par serment comme dessus.

(Collationné à l'original.)

CHARLES LEFEBVRE, *Greffier de la Reine.*

Charles De Jersey, Esq., Procureur de la Reine.

Appendix No. 1.

Proceedings "au Grand Criminel."

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(I.)—*Form of Summons to Prisoner for the Confrontation.*

Sergent ajournez George Faulkner, fils de George, de South Creek dans le Comté de Norfolk en Angleterre, prisonnier dans la prison publique, à prochain devant Monsieur le Bailiff ou Monsieur son Lieutenant et Messieurs les Jurés, instance des Officiers de la Reine, pour voir Frederic Mansell Jun., Ecuyer, Mr. James Frecker, Mr. H. Boyd, T. S. C. D. Utermarck, Ecuyer, Monsieur Charles Vaucour, et Sieur Servington Wyatt, témoins des dits Officiers de la Reine, être confrontés avec le dit Faulkner en la cause qu'ils ont contre le dit Faulkner aux fins d'acte du 10e Décembre, 1842.

(Signé) CHARLES DE JERSEY, *Procoreur de la Reine.*
J. T. DE SAUMAREZ, *Cle. de la Reine.*
JAMES BARBET, *Sergent de la Reine.*

Ce 17e Décembre, 1842.

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(K.)—*Confrontation.*

Le 19e Décembre, 1842, devant Jean Guille, Ecuyer, Juge Délégué, présens Jean Hubert et Hilary Ollivier Carré, Ecuyers, Jurés.

Frederic Mansell Junieur, Ecuyer, témoin des Officiers de la Reine, ayant été fait convenir devant la Cour et été confronté avec George Faulkner, prisonnier dans la prison publique, en la cause que les dits Officiers de la Reine ont contre le dit Faulkner, aux fins d'Acte du 10e Décembre, 1842, le dit Faulkner ayant été interrogé s'il a aucun reproche contre le dit témoin, a le prisonnier déclaré s'opposer à la déclaration du dit Monsieur Mansell, soutenant qu'il n'est témoin idoine, ayant intérêt dans la question, et le prisonnier ayant toute raison de croire que la signature "Frederic Mansell Jun." à l'endos du dit billet est la véritable signature du dit Monsieur Mansell, ensuite de quoi la Cour a procédé à la dite confrontation, sans préjudice au dit saön que le dit prisonnier pourra faire valoir en temps et lieu; après quoi, le dit témoin ayant été sermenté de nouveau et après qu'on lui a lû sa déposition et récolement en présence du dit Faulkner, et de son conseil l'Avocat Falla,

*Etant interrogé.*—(*Par la Cour.*) Is the prisoner at the bar the person you allude to in your deposition under the name of George Faulkner?

*A répondu.*—Yes.

*Etant interrogé.*—What is your profession, and where do you reside?

*A répondu.*—I am a brewer, and reside in the parish of Saint Peter Port.

*Etant interrogé.*—(*Par le Prisonnier.*) How long have you known the prisoner?

*A répondu.*—Four or five years.

*Etant interrogé.*—Were you at any time pretty free and intimate with him.

*A répondu.*—Never.

*Etant interrogé.*—While you have known him has he been in the habit of coming to your Brewery pretty often?

*A répondu.*—Occasionally.

*Etant interrogé.*—Was he ever in the counting-house of the Brewery alone with you?

*A répondu.*—He may have been, but, generally speaking, Mr. Frecker was present.

*Etant interrogé.*—In September last did the prisoner go to Alderney to establish a brewery?

*A répondu.*—I heard so, but don't know it of myself.

*Etant interrogé.*—Have you been in the habit of sending beer to Alderney from your Brewery for a number of years?

*A répondu.*—Yes.

*Etant interrogé.*—Has the prisoner ever asked you to remain security or endorse bills for him?

*A répondu.*—No; but he asked me to lend him some money.

*Etant interrogé.*—Did you know Thomas Torode when living as a servant with the prisoner, and are you aware that he has left the island?

*A répondu.*—I don't know such a man.

Et a le prisonnier déclaré n'avoir d'autre interrogats à lui faire.

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Mr. James Frecker, témoin comme dessus, confronté avec le dit Faulkner en la dite cause contre le dit Faulkner aux fins d'acte du 10e Décembre, 1842, le dit Faulkner ayant été interrogé s'il a aucun reproche contre le dit témoin et ayant répondu qu'il n'en a point, après quoi, le dit témoin, ayant été sermenté de nouveau, et après qu'on lui a lû sa déposition et récolement, en présence du dit Faulkner et de son conseil l'Avocat Falla,

*Etant interrogé.*—(*Par la Cour.*) Is the prisoner at the bar the person you allude to in your gallicé "récolement" under the name of Faulkner?

*A répondu.*—Yes.

GUERNSEY.

*Answers to Questions.*

SERIES I.

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*Etant interrogé.*—(*Par le Prisonnier.*) To whom does the Brewery at Country Mansell belong?

*A répondu.*—The building belongs to Mr. Frederick Mansell Sen.

*Etant interrogé.*—Who keeps the cash received at the Brewery?

*A répondu.*—I do.

*Etant interrogé.*—Do you give an account of the cash received at the Brewery to Mr. Frederick Mansell Sen.?

*A répondu.*—No.

*Etant interrogé.*—How often does Mr. Frederic Mansell Sen. go the Brewery to examine the books?

*A répondu.*—When he is in the Island, almost every day.

*Etant interrogé.*—Do you mean to say that Mr. Frederic Mansell Jun. does not receive a fixed salary from his father?

*A répondu.*—No, he does not.

*Etant interrogé.*—How do you know it.

*A répondu.*—By our books, and, if he did, I should have to pay it myself, being the cashier.

*Etant interrogé.*—Do you pay all accounts due by the Brewery?

*A répondu.*—Yes, when ordered to do so by Mr. Mansell Jun.

*Etant interrogé.*—To whom do you pay any balance of cash you may have in hand?

*A répondu.*—To Mr. Mansell Jun.

*Etant interrogé.*—How long have you known the prisoner?

*A répondu.*—I can't say positively, perhaps about ten years.

*Etant interrogé.*—During the time you have known the prisoner, has he dealt at the Brewery

*A répondu.*—Yes.

*Etant interrogé.*—In the month of September last did the prisoner go to Alderney to establish a brewery?

*A répondu.*—I don't know in what month, but previous to his going he told me he was going to Alderney, but did not say it was to establish a brewery.

*Etant interrogé.*—Did you try to dissuade him from going to Alderney?

*A répondu.*—Yes.

*Etant interrogé.*—Did you tell him it would be better for him to remain in Guernsey to take again the Canteen at the Fort?

*A répondu.*—Yes, I think I did.

*Etant interrogé.*—Did you tell him that you had no doubt Mr. Mansell would remain security for him?

*A répondu.*—I don't recollect, but I don't apprehend Mr. Mansell would have objected giving that security.

*Etant interrogé.*—After you had tried to dissuade the prisoner from going to Alderney, did you call on him a second time to dissuade him from going?

*A répondu.*—Not to my recollection.

*Etant interrogé.*—Did you tell him, if he remained in Guernsey he might have a chance of having your place at the Brewery?

*A répondu.*—No, I do not recollect it.

*Etant interrogé.*—Did you tell the prisoner that Mr. Frederic Mansell had discharged your two sons?

*A répondu.*—I can't say.

*Etant interrogé.*—Did you tell the prisoner, that Mr. Mansell had given you a month's warning after thirty two years' service and without any blame on your part?

*A répondu.*—On the contrary, it was I that gave Mr. Mansell warning; but if I mentioned it to the prisoner or not I can't say.

*Etant interrogé.*—To whom did you give that warning, to Mr. Mansell Sen. or to Mr. Mansell Jun?

*A répondu.*—To Mr. Mansell Jun.

*Etant interrogé.*—Previously to giving warning to Mr. Mansell Jun. had you spoken about it to Mr. Mansell Sen.?

*A répondu.*—No, but I did afterwards.

*Etant interrogé.*—On the oath you have taken, when you gave that warning, had you the intention of leaving?

*A répondu.*—Yes, I had.

*Etant interrogé.*—Have you always found the prisoner honest and straightforward in his dealings?

*A répondu.*—Very much so indeed.

*Etant interrogé.*—(*Par la Cour.*) Who carried on the business at the Brewery in August last, and who carries it on now?

*A répondu.*—Mr. Mansell Jun.

*Etant interrogé.*—How long has he carried it on

*A répondu.*—About seven years.

*Etant interrogé.*—(*Par le Prisonnier.*) Were you in the habit of sending beer to Alderney?

*A répondu.*—Yes, to Mr. Scott and one or two persons to whom we still send some.

Et a le prisonnier déclaré n'avoir d'autre interrogats à lui faire.

Mons. Henri Boyd, témoin comme dessus, confronté avec le dit Faulkner en la dite cause contre le dit Faulkner aux fins d'acte du 10e Décembre, 1842, le dit Faulkner n'ayant de reproche contre le dit témoin comme dessus.

*Etant interrogé.*—(*Par la Cour,*) Is the prisoner at the bar the person you allude to in your deposition under the name of Faulkner?

*A répondu.*—Yes.

*Etant interrogé.*—(*Par le Prisonnier.*) When the prisoner requested you to take a registry on behalf of Mr. Mansell on his property for the amount of the bill of 60*l.* endorsed by Mr. F. Mansell Jun., do you consider that the registry would be perfectly safe?

*A répondu.*—Yes, the price asked for the property was 400*l.* and seventeen quarters, and there was at that time registries but to the amount of 100*l.* or thereabouts, an offer of 350*l.* was made for it and refused by Mr. Faulkner, this would have left a bonus of upwards of 200*l.* to Faulkner, part of which I should have applied to the payment of his other debts and given him the balance.

Et a le prisonnier déclaré n'avoir d'autre interrogats à lui faire.

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T. S. C. D. Utermarck, Ecuyer, témoin comme dessus, confronté avec le dit Faulkner aux fins d'acte du 10e Décembre, 1842, le dit Faulkner n'ayant de reproche contre le dit témoin comme dessus.

*Etant interrogé.*—(*Par la Cour.*) Is the prisoner at the bar the person you allude to in your deposition under the name of the prisoner?

*A répondu.*—Yes.

*Etant interrogé.*—(*Par le Prisonnier.*) Have you discounted bills at the Bank with the endorsement of other parties but Mr. Mansell, more particularly with Mr. Preed?

*A répondu.*—Yes.

*Etant interrogé.*—How many bills have been placed at the Bank by the prisoner with Mr. Mansell's endorsement?

*A répondu.*—Three; the first was given on the 14th August, 1841, for 60*l.*, the second on the 16th or 17th February, 1842, also for 60*l.*, and the third, which is the bill in question, on the 19th August last.

*Etant interrogé.*—Was the first bill handed over by you to Mr. Joseph Collings Jun., and did he say it was all right?

*A répondu.*—I believe so.

*Etant interrogé.*—Has the amount of the bill now in question marked "A" been offered to the Bank?

*A répondu.*—Not to my knowledge.

*Etant interrogé.*—Is the signature at the back of the bill marked "A" similar, as far as you know, to the other endorsement on the two former bills?

*A répondu.*—I think it is.

Et a le prisonnier déclaré n'avoir d'autre interrogats à lui faire.

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Mr. Charles Vaucour, témoin comme dessus, confronté avec le dit Faulkner en la dite cause contre le dit Faulkner aux fins d'acte du 10e Décembre, 1842, le dit Faulkner n'ayant de reproche contre le dit témoin comme dessus.

*Etant interrogé.*—(*Par la Cour.*) Is the prisoner at the bar the person you allude to in your deposition under the name of the prisoner?

*A répondu.*—Yes.

Et a le prisonnier déclaré n'avoir d'interrogats à lui faire.

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Sieur Servington Wyatt, témoin comme dessus, confronté avec le dit Faulkner en la dite cause contre le dit Faulkner aux fins d'acte du 10e Décembre, 1842, le dit Faulkner n'ayant de reproche contre le dit témoin comme dessus.

*Etant interrogé.*—(*Par la Cour.*) Is the prisoner at the bar the person you allude to in your deposition under the name of the prisoner?

*A répondu.*—Yes.

Et a le prisonnier déclaré n'avoir d'interrogats à lui faire.

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(L.)

Les confrontations faites et parfaites, a le prisonnier demandé de faire entendre Emma Anne Priaulx, Robert Douglas, James Burman, et —— Phillips, Ecuyer, pour prouver 1°, que Mr. F. Mansell Jun. est resté caution du dit Faulkner pour des sommes assez considerables à différentes reprises; et 2°, que le billet marqué "A" fut envoyé par le dit Faulkner à la maison du dit Mr. F. Mansell Jun. pour être endossé par le dit Mr. Mansell, et qu'il fut retourné au dit Faulkner avec l'endossement qui y est présentement; et lui a la Cour accordé sa dite demande pour lui valoir ainsi que de raison pour prouver les dits faits.

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GUERNSEY.

*Answers to Questions.*

SERIES I.

Charles de Jersey, Esq., Procureur de la Reine.

Appendix No. 1.

Proceedings "au Grand Criminel."

(M.)

Le 23 Janvier, 1843, devant Jean Guille, Ecuyer, Baillif, présens Messire William Collings et Thomas William Gosselin, Ecuyer, Jurés.

Ensuite des confrontations des témoins examinés contre le dit Faulkner, le dit Faulkner ayant demandé de faire entendre des témoins justificatifs, et ayant comparé ce jour devant la Cour, il a declaré qu'il se désiste de faire examiner les dits témoins.

(Collationné à l'original.)

CHARLES LEFEBVRE, *Greffier de la Reine.*

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(N.)—*Form of Summons to Prisoner.*

Sergent ajournez George Faulkner, fils de George, de South Creek dans le Comté de Norfolk en Angleterre, prisonnier dans la prison publique à Samedi prochain devant Monsieur le Baillif ou Monsieur son Lieutenant et Messieurs les Jurés Instance des Officiers de la Reine, à soutenir leur preuve en la cause qu'ils ont contre lui, à se voir adjuger aux peines et punitions imposées par les loix, pour avoir le dit Faulkner, soit seul ou avec autre son complice ou autres ses complices, le 19 Août, 1842, ou environ, dans la paroisse de St. Martin en cette Ile, félonieusement commis le crime de faux, le dit Faulkner ou complices ayant à l'endos d'un billet à ordre dont suit copie,

£50. St. Martin's, Aug. 19th, 1842.

Six months after date I promise to pay Mr. Frederick Mansell Jun. or order the sum of Fifty Pounds, for value received.

GEORGE FAULKNER.

endossé ou écrit ou rempli en tout ou partie les mots "Frederick Mansell Jun." à l'endos du dit billet, le dit endossement étant faux et simulé; et avoir le dit Faulkner, dans le dessein de frauder Messrs. Priaulx, Le Marchant, Rougier et Co. formant la compagnie dite Anglicé "The Guernsey Banking Company," le 19e Août, 1842, dans une maison à la Grande Rue de la ville de Saint Pierre Port en partie occupée par la dite compagnie, félonieusement offert et négocié le dit billet à ordre avec le dit endossement, sachant le dit endossement être faux et simulé, à T. S. C. D. Utermarck, Ecuyer, un des gérans de la dite compagnie ou à Mr. Charles Vaucour, commis de la dite compagnie, et ce en remplacement de partie d'un autre billet dû par le dit Faulkner à la dite compagnie, et qui devenait dû le dit jour 19e Août, 1842, ou environ, et leur payer leurs dépens. Après que par acte du 10 Décembre, 1842, le dit Faulkner a fait niance d'avoir commis le dit crime et a fait choix de l'Avocat Falla pour son conseil.

(Signé) CHARLES DE JERSEY, *Procureur de la Reine.*
J. T. DE SAUMAREZ, *Contrôle de la Reine.*
JAMES BARBET, *Sergent de la Reine.*

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(O.)—*Judgment.*

*A la Cour Royale de l'Ile de Guernsey.*

Le 28e Janvier, 1843, devant Jean Guille, Ecuyer, Baillif, présens Jean Le Messurier, Jean Hubert, Ecuyers, Messire William Collings, Hilary Ollivier Carré, Thomas William Gosselin, Thomas Le Retilley, Harry Dobrée, Thomas Fiott De Havilland et Thomas Andros, Ecuyers, Jurés.

Sur l'action des Officiers de la Reine contre George Faulkner, fils de George, de South Creek dans le Comté de Norfolk en Angleterre, prisonnier dans la prison publique, à soutenir leur preuve en la cause qu'ils ont contre lui, à se voir adjuger aux peines et punitions imposées par les loix, pour avoir le dit Faulkner, soit seul ou avec autre son complice ou autres ses complices, le 19e Août, 1842 ou environ, dans la paroisse de Saint Martin en cette Ile, félonieusement commis le crime de faux, le dit Faulkner ou complices ayant à l'endos d'un billet à ordre dont suit copie,

£50. St. Martin's, Aug. 19th, 1842.

Six months after date I promise to pay Mr. Frederick Mansell Jun., or order the sum of Fifty Pounds, for value received.

GEORGE FAULKNER.

endossé ou écrit ou rempli en tout ou partie les mots "Fredk. Mansell Jun." à l'endos du dit billet, le dit endossement étant faux et simulé; et avoir le dit Faulkner, dans le dessein de frauder Messrs. Priaulx, Le Marchant, Rougier & Co. formant la compagnie dite Anglicé "The Guernsey Banking Company," le 19e Août, 1842, dans une Maison à la Grande Rue de la Ville de St. Pierre Port en partie occupée par la dite compagnie, félonieusement offert et négocié le dit billet à ordre avec le dit endossement, sachant le dit endossement être faux et simulé, à T. S. C. D. Utermarck, Ecuyer, un des gérans de la dite compagnie ou à Mr. Charles Vaucour, commis de la dite compagnie, et ce en remplacement de partie d'un autre billet dû par le dit Faulkner à la dite compagnie et qui devenait dû le dit jour 19e Août, 1842, ou environ, et leur payer leurs dépens, aux fins d'acte du 10e Décembre, 1842. Est le dit Faulkner condamné à deux mois d'emprisonnement dans la prison publique dont le dernier mois sera au secret au pain et à l'eau, à cinq ans de banissement hors de ce Bailliage et aux frais, après avoir entendu lecture des dépositions des témoins des dits Officiers de la Reine.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

## APPENDIX No. 2.

### (A.)—*Proceedings "au Criminel" "Misdemeanor."*

Le Sept Décembre Mil huit cent trente sept, présens Jean Hubert, Jean Le Marchant et Hilary Ollivier Carré, Ecuyers, Jurés.

William Mitson, fils de William, de la paroisse de St. Pierre Port, ayant été ce jour produit devant la Cour par le ministère du Sieur Nicolas Le Messurier, un des assistants de Connétable de la dite paroisse, étant accusé d'avoir, soit seul ou avec autre son complice ou autres ses complices, la nuit du 4e au 5e Décembre, 1837, ou environ, pris, volé et emporté environ treize livres pesant de plomb qui faisoit partie de la couverture ou goutière d'un édifice appartenant au Sieur Charles Renouf et joignant à sa maison, lequel édifice donne dans la rue dite Back Street, qui conduit de la Contrée Mansell à Vauvert en la dite paroisse:—

*Etant interrogé.*—S'il est coupable de la dite accusation.

*A répondu.*—I am not guilty.

*Etant interrogé.*—Have you had a quantity of lead in your possession?

*A répondu.*—Yes; it was given me to sell by a person whose name I do not wish to tell. I would rather be punished myself than say who it was.

*Etant interrogé.*—On what day?

*A répondu.*—Last Tuesday morning.

*Etant interrogé.*—Have you offered it for sale?

*A répondu.*—Yes, to a Frenchman who keeps a shop opposite the King's Weights, who told me he had orders from Mr. Renouff to stop it, as he had some stolen from his premises.

Une quantité de plomb ayant été exhibé au prisonnier.

*Etant interrogé.*—Is the lead now exhibited to you the same that was given to you and that you offered for sale to the Frenchman?

*A répondu.*—Yes.

(Collationné à l'original.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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### (B.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 7e Décembre, 1837, devant Daniel de Lisle Brock, Ecuyer, Bailliff, présens Jean Hubert, Jean Le Marchant et Hilary Ollivier Carré, Ecuyers, Jurés.

William Mitson, fils de William, de la paroisse de Saint Pierre Port, ayant été ce jour produit devant la Cour par le ministère du Sieur Nicolas Le Messurier, un des assistants de Connétable de la dite paroisse, étant accusé d'avoir, soit seul ou avec autre son complice ou autres ses complices, la nuit du 4e au 5e Décembre, 1837, ou environ, pris, volé, et emporté environ treize livres pesant de plomb, qui faisoit partie de la couverture ou goutière d'un édifice appartenant au Sieur Charles Renouf et joignant à sa maison, lequel édifice donne dans la rue dite "Back Street," qui conduit de la Contrée Mansell à Vauvert en la dite paroisse. La Cour, après avoir pris par écrit l'interrogatoire du dit Mitson et entendu des témoins dignes de foi, a ordonné qu'il sera constitué prisonnier dans la prison publique, pour que les Officiers de Sa Majesté informent contre lui.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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### (C.)—*Form of Summons to Prisoner.*

Sergent ajournez William Mitson, fils de William, de la paroisse de Saint Pierre Port, prisonnier dans la prison publique, à Samedi prochain devant Monsieur le Baillif ou Monsieur son Lieutenant et Messieurs les Jurés, instance des Officiers de la Reine, à se voir adjuger à telle peine, punition ou châtiment corporel que la Cour trouvera condigne, pour avoir le dit Mitson, soit seul ou avec autre son complice ou autres ses complices, la nuit du 4e au 5e Décembre, 1837, ou environ, pris, volé et emporté environ treize livres pesant de plomb, qui faisoit partie de la couverture ou goutière d'un édifice appartenant au Sieur Charles Renouf et joignant à sa maison, lequel édifice donne dans la rue dite "Back Street," qui conduit de la Contrée Mansell à Vauvert en la dite paroisse, le tout á l'infraction des loix, trouble de l'ordre public, et leur payer leurs dépens.

(Signé) C. DE JERSEY, *Procureur de la Reine.*
J. T. DE SAUMAREZ, *Cle. de la Reine.*
JAMES BARBET, *Sergent de la Reine.*

Le 8e Décembre, 1837.

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### (D.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 9e Décembre, 1837, devant Daniel de Lisle Brock, Ecuyer, Baillif, présens Jean Guille, Jean Hubert, Jean Le Marchant, Hilary Ollivier Carré, Frederic Mansell, Pierre Bonamy Dobrée, Thomas William Gosselin, Thomas Le Retilley et Harry Dobrée, Ecuyers, Jurés.

Les Officiers de la Reine prouveront les fins de l'action qu'ils ont contre William Mitson, fils de William, de la paroisse de Saint Pierre Port, prisonnier dans la prison publique, à se voir

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adjuger à telle peine, punition ou châtiment corporel que la Cour trouvera condigne, pour avoir le dit Mitson, soit seul ou avec autre son complice ou autres ses complices, la nuit du 4e au 5e Décembre, 1837, ou environ, pris, volé et emporté environ treize livres pesant de plomb, qui faisoit partie de la couverture ou goutière d'un édifice appartenant au Sieur Charles Renouf et joignant à sa maison, lequel édifice donne dans la rue dite "Back Street," qui conduit de la Contrée Mansell à Vauvert en la dite paroisse, le tout à l'infraction des loix, trouble de l'ordre public, et leur payer leurs dépens, après que le dit Mitson a fait niance d'avoir commis le dit crime et a fait choix de l'Avocat Jeremie pour son conseil.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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(E.)—*Form of Summons to the Prisoner.*

Sergent ajournez William Mitson, fils de William, de la paroisse de Saint Pierre Port, prisonnier dans la prison publique, à Samedi prochain devant Monsieur le Baillif ou Monsieur son Lieutenant et Messieurs les Jurés, instance des Officiers de la Reine, à soutenir leur preuve en la cause qu'ils ont contre lui à se voir adjuger a telle peine, punition ou châtiment corporel que la Cour trouvera condigne, pour avoir le dit Mitson, soit seul ou avec autre son complice ou autres ses complices, la nuit du 4e au 5e Decembre, 1837, ou environ, pris, volé et emporté environ treize livres pesant de plomb, qui faisoit partie de la couverture ou goutière d'un édifice appartenant au Sieur Charles Renouf et joignant à sa maison, lequel édifice donne dans la rue dite "Back Street," qui conduit de la contrée Mansell à Vauvert en la dite paroisse, le tout à l'infraction des loix, trouble de l'ordre public, et leur payer leurs dépens. Après que, par acte du 9e Décembre, 1837, le dit Mitson a fait niance d'avoir commis le dit crime et a fait choix de l'Avocat Jeremie pour son conseil.

(Signé) CHAS. DE JERSEY, *Procureur de la Reine.*
J. T. DE SAUMAREZ, *Cle. de la Reine.*
JAMES BARBET, *Sergent de la Reine.*

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(F.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 16e Décembre, 1837, devant Daniel de Lisle Brock, Ecuyer, Baillif, présens Jean Le Messurier, Hilary Ollivier Carré, Frederic Mansell, Pierre Bonamy Dobrée, Thomas William Gosselin, Thomas Le Retilley, et Harry Dobrée, Ecuyers, Jurés.

Sur l'action des Officiers de la Reine, Contre William Mitson, fils de William, de la paroisse de Saint Pierre Port, prisonnier dans la prison publique, à soutenir leur preuve en la cause qu'ils ont contre lui à se voir adjuger à telle peine, punition ou châtiment corporel que la Cour trouvera condigne, pour avoir le dit Mitson, soit seul ou avec autre son complice ou autres ses complices, la nuit du 4e au 5e Décembre, 1837, ou environ, pris, volé et emporté treize livres pesant de plomb qui faisoient partie de la couverture ou goutière d'un édifice appartenant au Sieur Charles Renouf et joignant à sa maison, lequel édifice donne dans la rue dite "Back Street," qui conduit de la Contrée Mansell à Vauvert en la dite paroisse, le tout à l'infraction des loix trouble de l'ordre public, et leur payer leurs dépens, aux fins d'acte du 9e Décembre, 1837. Est le dit Mitson condamné à deux mois d'emprisonnment solitaire dans la prison publique au pain et à l'eau et aux frais, aprés avoir entendu les témoins des dits Officiers de la Reine.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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(G.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 14e Novembre, 1845, devant Pierre Stafford Carey, Ecuyer, Baillif, presens Jean Le Marchant, Hilary Ollivier Carré, Harry Dobrée et Thomas Andros, Ecuyers, Jurés.

Henri Taylor Dale, fils de François, de la paroisse de Saint Pierre Port, ayant été ce jour produit devant la Cour par le ministère de Josué P. T. Ahier, Ecuyer, un des Connétables de la ville et paroisse de Saint Pierre Port, étant accusé d'avoir, soit seul ou avec autre son complice ou autres ses complices, dans la nuit de Samedi le 8e, à Dimanche le 9e Novembre courant, dans ou proche la rue des Forges en la ville et paroisse de Saint Pierre Port, assailli et cruellement battu et maltraité le Sieur James Hayes; le dit Dale ou complice ayant porté plusieurs coups violents, dont un ou quelques uns avec un bâton ou autres instruments obtus et dangereux, à la joue gauche et au nez du dit Hayes, et d'avoir le dit Dale ou autre son complice ou autres ses complices fait tomber le dit Hayes par terre, et, lorsque le dit Hayes étoit par terre, d'avoir le dit Dale ou autre son complice ou autres ses complices porté des coups de pied violens au dit Hayes, d'avoir sauté sur et foulé aux pieds le corps du dit Hayes; de tous lesquels dits maltraitemens se sont ensuivis contusions, meurtrissures et effusion de sang. La Cour, après avoir pris par écrit l'interrogatoire du dit Dale et entendu des témoins dignes de foi, a ordonné qu'il sera constitué prisonnier dans la prison publique pour plus ample information, sauf à lui à donner caution juratoire qu'il se présentera en Cour Jeudi prochain, laquelle caution il a présentement donnée.

(Extrait des Records de la dite Ile de Guernesey.)

JEAN NAFTEL, *Député Greffier de la Reine.*

(H.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 27e Novembre, 1845, devant Monsieur le Baillif, présens Hilary Ollivier Carré, Harry Dobrée, et Thomas Andros, Ecuyers, Jurés.

Henri Taylor Dale, constitué prisonnier pour plus ample information aux fins d'acte du 14e courant, ayant été ce jour reproduit devant la Cour. La Cour, après avoir continué son interrogatoire et entendu des témoins dignes de foi, a ordonné qu'il sera constitué prisonnier dans la prison publique pour plus ample information, sauf à lui de donner caution juratoire qu'il se présentera en Cour demain, laquelle caution il a présentement donnée.

(Extrait des Records de la dite Ile de Guernesey,)

JEAN NAFTEL, *Député Greffier de la Reine.*

Appendix No. 2. Proceedings "au Criminel," "Misdemeanor."

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(I.)

Le 28e Novembre, 1845, devant Monsieur le Baillif, présens Hilary Ollivier Carré, Harry Dobrée, et Thomas Andros, Ecuyers, Jurés.

Henri Taylor Dale, constitué prisonnier pour plus ample information aux fins d'acte du 27e courant, ayant été ce jour reproduit aux fins du dit acte. La Cour a ordonné qu'il sera constitué prisonnier dans la prison publique pour que les Officiers de la Reine informent contre lui, sauf à lui de donner caution de vingt livres sterling, qu'il se présentera toutes fois et quantes qu'il en sera requis par les officiers de la Reine.

(Extrait des Records de la dite île de Guernesey.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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(K.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 28e Décembre, 1842, devant Jean Guille, Ecuyer, Juge Délégué, présens Jean Hubert et Hilary Ollivier Carré, Ecuyers, Jurés.

Sur les informations que la Cour a continué à prendre sur l'accusation contre Etienne Luxon, lequel fut constitué pour plus ample information aux fins d'acte du 21e Décembre, 1842. La Cour, après avoir entendu des témoins dignes de foi, ouies les conclusions des officiers de la Reine, a déchargé le dit Luxon de la dite accusation, et a ordonné qu'il sera élargi de prison.

(Extrait des Records de la dite île de Guernesey.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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## APPENDIX NO. 3.

Appendix No. 3. Proceedings en "Police Correctionnelle."

*Proceedings en "Police Correctionnelle."*

(A.)—*A la Cour Royale de l'Ile de Guernesey.*

Le dix-huit Septembre, mil huit cent quarante-cinq, devant Hilary Ollivier Carré, Ecuyer, Lieutenant Baillif, présens Thomas Fiott De Havilland et William Pierre Metivier, Ecuyers, Jurés.

Jean Russell, portefaix, ayant été ce jour produit devant la Cour par Josué P. T. Ahier, Ecuyer, un des Connétables de la ville et paroisse de Saint Pierre Port, étant accusé d'avoir porté un coup violent au Sieur Murphy sur le Devaloir de la Chaussée du Nord, le trois courant, lors du débarquement des passagers arrivant d'au bord du bateau à vapeur. La Cour, après avoir entendu des témoins dignes de foi, ouies les conclusions des Officiers de la Reine, a suspendu au dit Russell son Anglicé "Badge," jusqu' à Lundi.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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(B.)

Le neuf Octobre, mil huit cent quarante-cinq, devant Pierre Stafford Carey, Baillif, présens Jean Le Marchant, Hilary Ollivier Carré, Harry Dobrée et Thomas Andros, Ecuyers, Jurés.

James Pardy, ayant été ce jour produit devant la Cour, par Mr. J. H. Guilbert, un des assistants Connétables de la ville et paroisse de Saint Pierre Port, accusé d'avoir causé du désordre dans la boutique du Sieur Dale, lorsqu'en état d'ivresse. La Cour, après avoir entendu des témoins dignes de foi, ouies les conclusions des Officiers de la Reine, a condamné le dit Pardy à sept livres tournois d'amende envers Sa Majesté, ou, à defaut de paiement, à deux fois vingt-quatre heures d'emprisonnement dans la prison publique.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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Appendix No. 3.

Proceedings en "Police Correctionnelle."

(C.)—*A la Cour Royale de l'Ile de Guernesey.*

Le trente-un Juillet, mil huit cent quarante-cinq, devant Pierre Stafford Carey, Ecuyer, Baillif, présens Messire William Collings, Hilary Ollivier Carré et Thomas Fiott De Havilland, Ecuyers, Jurés.

Sur les plaintes réciproques faites à la Cour par les Sieurs Nicholas Webb et Jean Helman, lesquels se plaignent mutuellement d'avoir été battus et maltraités dans la Grande Rue de la ville; la Cour, après avoir entendu plusieurs témoins dignes de foi, par le témoignage desquels il a paru que les premières voies de fait ont eu lieu de la part du dit Webb, ouies les conclusions du Procureur de la Reine, a condamné le dit Webb à quatorze livres tournois d'amende envers Sa Majesté.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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(D.)—*A la Cour Royale de l'Ile de Guernesey.*

Le vingt-un Août, mil huit cent-quarante cinq, devant Hilary Ollivier Carré, Ecuyer, Lieutenant Baillif, présens Frederic Mansell, Thomas Fiott de Havilland et Thomas Andros, Ecuyers, Jurés,

Auguste Le Petit, François de nation, ayant été ce jour produit devant la Cour par Mr. William Thomas Maclerindell, un des Connétables de la paroisse de Saint Martin, accusé d'avoir grossièrement maltraité le Sieur Samuel Marquand dans sa maison située à Saint André. La Cour, après avoir entendu des témoins digne de foi, ouies les conclusions des Officiers de la Reine, a condamné le dit Le Petit à huit jours d'emprisonnement dans la prison publique.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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Appendix No. 4.

Proceedings for the recovery of Penalties for infringement of Acts of Parliament and Ordinances of the Royal Court.

## APPENDIX No. 4.

*Proceedings for the Recovery of Penalties for Infringement of Acts of Parliament and Ordinances of the Royal Court.*

(A.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 17e Mars, 1838, devant Daniel de Lisle Brock, Ecuyer, Baillif, présens Jean Le Messurier, Jean Hubert, Jean Le Marchant, Frederic Mansell, Pierre Bonamy Dobrée, Thomas William Gosselin, Thomas Le Retilley et Harry Dobrée, Ecuyers, Jurés.

Avant que faire droit en la cause de James Pulling, Ecuyer, un des principaux Officiers de la Douane en cette Ile, et Officiers de la Reine joints contre Jean Louis Maurin, à se voir adjuger à cent livres sterling de pénalité suivant et conformément à l'article 90 d'un acte de Parlement de la 3e et 4e année du règne de Sa feue Majesté Guillaume Quatre, Chapitre 59, intitulé "An Act to regulate the Trade of the British Possessions abroad," le dit acte de Parlement, en obéisance à un Ordre de Sa Majesté en Conseil en date du 16e Octobre, 1833, au lieu de l'enregîtrement d'icelui mais au même effet, logé au Greffe pour faire partie des Records de cette Ile, aux fins d'acte de la Cour Royale du 2e Novembre, 1833, à quoi recours, pour avoir le dit Maurin, le 30e Décembre, 1837, ou environ, été trouvé ou découvert au bord du schooner Sarnia, dont le Sieur Daniel Mauger est maître, saisi aflot entre les chaussées de cette Ile, le dit navire ayant à son bord une quantité de tabac contenant trente livres pesant ou environ, dont l'importation dans cette Ile ou l'exportation hors de cette Ile est prohibée dans des fûts ou barils (Anglicé "Cask or Package") pesant moins de 450 livres chacun, suivant et conformément à l'article 88e du dit acte de Parlement, à quoi recours, et dépens; il a été ordonné que les témoins de part et d'autre seront ouis.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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(B.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 24e Mars, 1838, devant Daniel de Lisle Brock, Ecuyer, Baillif, présens Jean Guille, Jean Le Messurier, Jean Hubert, Jean Le Marchant, Hilary Ollivier Carré, Frederic Mansell, Pierre Bonamy Dobrée, Thomas William Gosselin, Thomas Le Retilley et Harry Dobrée, Ecuyers, Jurés.

Jean Louis Maurin, amerci envers James Pulling, Ecuyer, un des principaux Officiers de la Douane en cette Ile, et Officiers de la Reine joints et est adjugé sur arrêt leur payer cent livres sterling de pénalité suivant et conformément à l'article 90 d'un acte de Parlement de la 3e et 4e année du règne de Sa feue Majesté Guillaume Quatre, Chapitre 59, intitulé "An Act to regulate the Trade of the British Possessions abroad," le dit acte de Parlement en obéissance à un Ordre de Sa Majesté en Conseil en date du 16e Octobre, 1833, au lieu de l'enregîtrement d'icelui, mais au même effet, logé au Greffe pour faire partie des Records de cette Ile, aux fins d'acte de la Cour Royale du 2e Novembre, 1833, à quoi recours, pour avoir le dit Maurin le 30e Décembre, 1837 ou environ, été trouvé ou découvert au bord du schooner Sarnia, dont le Sieur Daniel Mauger est maître, saisi aflot entre les chaussées de cette Ile, le dit navire ayant à son bord une quantité de tabac contenant trente livres pesant, ou environ, dont l'importation dans cette Ile ou l'exportation hors de cette Ile est

prohibée dans des fûts ou barils (Anglicé "Cask or Package") pesant moins de 450 livres chacun, suivant et conformément à l'Article 88e du dit acte de Parlement à quoi recours, et dépens, aux fins d'acte du 17e Mars, 1838, et aux frais, après avoir entendu les dits Officiers de la Reine, le dit Maurin n'en ayant produit.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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(C.)—*A la Cour Royale de l'Ile de Guernesey.*

Le deux Mai, mil huit cent quarante-six, devant Hilary Ollivier Carré, Ecuyer, Lieutenant Baillif, présens Jean Le Marchant, Frederic Mansell, Thomas William Gosselin, Thomas Le Retilley, Thomas Fiott de Havilland, Thomas Andros, Edgar MacCulloch et William Pierre Metivier, Ecuyers, Jurés.

Sur l'action de Mr. Jean Gardner, un des assistant Connêtables de la ville et paroisse de Saint Pierre Port, délateur, et Officiers de la Reine joints, contre le Sieur Philippe Du Feu, à se voir adjuger à une amende à discretion de Justice qui ne passera pas deux cents livres tournois, suivant et conformément a l'Ordonnance du 17e Janvier, 1825, pour avoir le dit Du Feu, Samedi le 23e et Lundi le 25e Janvier, 1846, ou environ, vendu ou détaillé des liqueurs spiritueuses, soit pures ou mélangées, dans une maison habitée par le dit Du Feu et située à Hauteville, dans la dite paroisse de Saint Pierre Port, et ce sans en avoir préalablement obtenu congé de la Cour de ce faire en contravention à la dite Ordonnance, et leur payer leurs dépens, aux fins d'acte du 28e Mars, 1846. Est le dit Du Feu condamné à cinquante livres tournois d'amende et aux frais, après avoir entendu les témoins depart et d'autre.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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## APPENDIX No. 5.



*Proceedings for Libel, Assault, and Battery, "Clameur de Haro," and "Nouvelle Dessaisine."*

(A.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 4e Juillet, 1846, devant Pierre Stafford Carey, Ecuyer, Baillif, presens Jean Le Marchant, Hilary Ollivier Carré, Frederic Mansell, Thomas William Gosselin, Thomas Le Retilley, Harry Dobrée, Thomas Fiott De Havilland, Thomas Andros, Edgar MacCulloch, et William Pierre Metivier, Ecuyers, Jurés.

Sieur Pierre Sarchet et Marie Rihoy, sa femme, vers Rachel-Brehaut Mauger, à ouir sa plainte et déclaration d'avoir été la dite Mauger atrocement injuriée, diffamée et calomniée par la dite Rihoy dans la paroisse de Saint Pierre Port, dans ou vers le mois de Décembre, 1845, ou Janvier, 1846, et est permise à la dite Mauger l'adjonction des officiers de la Reine pour en avoir réparation condigne avec dépens.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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(B.)—*A la Cour Royale de l'Ile de Guernesey.*

Le 16e Mai, 1846, devant Hilary Ollivier Carré, Ecuyer, Lieutenant Baillif, présens Jean Le Marchant, Ecuyer, Messire William Collings, Frederick Mansell, Thomas William Gosselin, Thomas Le Retilley, Harry Dobrée, Thomas Fiott De Havilland, Thomas Andros, Edgar MacCulloch et William Pierre Metivier, Ecuyers, Jurés.

La cause de Mr. Guillaume Brouard, un des Connétables de la paroisse de Saint Sauveur, et Messieurs Jean Blondel, Nicolas Allez, et Abraham Simon, trois des Douzeniers de la dite paroisse, et officiers de la Reine joints, contre Mr. Thomas Blondel, à voir la Cour faire droit sur le rapport par écrit de Thomas Le Retilley et William Pierre Metivier, Ecuyers, Jurés, commis de la Cour en date du 6e Mai, 1846, par lequel, sur l'action du dit Connétable et des dits Douzeniers de la dite paroisse contre le dit Thomas Blondel à se voir adjuger déchéoir de la Clameur de Haro, que mal à propos et contre droit il interjetta le 29e Avril, 1846, entre les huit à neuf heurs du matin, en présence de Nicolas De La Mare et de Jean De La Mare, aux Sieurs Abraham Le Cras et Jean Batiste, ouvriers, lesquels étaient employés à biner le fonds de la rue appartenante au dit Blondel et située és Rées en la dite paroisse de Saint Sauveur, au grand préjudice et dommage du dit Blondel et contre son droit et propriété, ainsi que le dit Blondel prétend. Et protestent les acteurs de tous dommages, chommages, retardemens, événemens, intérêts et dépens, aux fins d'acte du 2e Mai, 1846. Est appointée a être décidée par vue de Justice sur le lieu de l'acquiéscement des parties où elles pourront faire venir leurs preuves et aides, si aucunes ont, suivant à l'Ordonnance.

En Vue.

(Extrait des Records de la dite Ile de Guernesey.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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GUERNSEY.

*Answers to Questions.*

SERIES I.

Charles de Jersey, Esq., Procureur de la Reine.

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(C.)—*A la Cour Rogale de l'Ile de Guernesey.*

Le vingt-septième d'Octobre, 1821, devant Daniel de Lisle Brock, Ecuyer, Baillif, présens Eleazar Le Marchant, Carteret Priaulx, Jean La Serre, Josias Le Marchant, Jean Guille, James Carey, Jean Le Messurier, Hellier Carré, Pierre Le Pelley et Jean Hubert, Ecuyers, Jurés. (Fol. 423.)

Sur l'action du Sieur Patrick O'Brien, à cause de Dame Marie Le Poidevin sa femme, propriétaire d'un courtil et jaonière joignant, et au sud, ou environ, d'un autre courtil appartenant au Sieur Moïse Vaudin, et Officiers du Roi joints, sur l'action en nouvelle dessaisine contre le dit Vaudin, à se voir adjuger à la dite nouvelle dessaisine et réparation de tous dommages, pour avoir le dit Vaudin, dans le courant du mois de Juillet dernier, abattu ou fait abattre et coupé trois arbres appartenant au dit O'Brien et plantés dans son dit courtil, à son grand préjudice et dommage et contre son droit et propriété, et dépens, aux fins d'acte du 20e Octobre, 1821. Sont les dites parties envoyées accéder le lieu devant Pierre Le Pelley et Jean Hubert, Ecuyers, Jurés, sur trois livres tournois.

(Extrait des Records de la dite Ile de Guernesey.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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No. 7.

John De Havilland Utermarck, Esq., Contrôle de la Reine.

*The Answers of John De Havilland Utermarck, Esq., Her Majesty's Contrôle at Guernsey to the first Series of Questions.*

I think my answers will be better understood by my giving previously a short summary of our criminal proceedings.

Persons charged with having committed indictable offences are taken up by the constables or police, of which there are two in each parish throughout the Island, and brought before the Court at a private sitting. The constable also warns whatever witnesses he considers necessary to support the charge. The Court is composed of the Bailiff or his Lieutenant, two or more Jurats, the law officers of the Crown (Procureur and Comptroller) and the Greffier. The witnesses are sworn in presence of the prisoner, who then retires in the custody of the constable, and the witnesses are heard on oath separately, without their deposition being committed to writing. Should the evidence not be sufficient for a committal, the Court either discharge the prisoner, in which case no part of the proceedings is recorded, or remand him "pour plus ample information." Should the evidence warrant a committal for trial, an "acte d'accusation" is drawn up against the prisoner, who is then introduced, and is questioned by the Court in an "interrogatoire," being first cautioned that what he says will be taken down in writing and produced on his trial. The prisoner then withdraws, and the "acte d'accusation" remains in the following form:—

A. B. (prisoner) ayant été ce jour produit devant la Cour par C. D. (Constable) étant accusé d'avoir (here the charge is stated at full length in the technical language of an indictment). La Cour, après avoir entendu des témoins dignes de foi et pris par écrit l'interrogatoire du dit A. B., a ordonné qu'il sera constitué prisonnier dans la prison publique, (sauf à lui de donner caution de £ stg., if the offence be bailable) pour que les officiers de la Reine informent contre lui.

Subsequently, the law officers send a summons to the prisoner, in which the charge is set forth as in the "acte d'accusation," and, on the following Saturday (in term), he is brought to the bar of the Court by the Sheriff to plead Guilty or Not guilty to the indictment preferred against him at the suit of the law officers, and exactly conformable to his summons, and choose his counsel. A record of the "acte" runs as follows, after detailing the indictment, "Les Officiers de la Reine prouveront, après que le dit A. B. a fait niance d'avoir (or "a confessé avoir") commis le dit crime et a fait choix de l'Avocat —— pour son conseil."

Should the prisoner admit part of the charge, the words "au reste se référe à son interrogatoire" are added after "a fait niance d'avoir commis le dit crime."

The advocate chosen is bound to defend the prisoner, and does so without fee, if the prisoner cannot afford payment; the prisoner also receives (gratis if he cannot pay) a copy of his "interrogatoire" as soon after his committal as he pleases.

Three days at least before the day of trial, the prisoner receives another summons from the law officers containing an exact recital of the "acte" passed when he chose counsel.

The law officers send summonses to their witnesses, who cannot exceed twelve in number, and the prisoner may send summonses to a similar number, all which summonses are carried gratis by the Queen's serjeant, the attendance of all the witnesses being paid by the Crown.

The proceedings of trial for all offences not described in the indictment as felonious (which I shall distinguish as "au Criminal ordinaire") are as follows. The Court, which must be "en corps," that is composed of the Bailiff or his Lieutenant and at least seven Jurats, all or any of whom may have been present at the former proceedings, sits in public. The indictment is read by the Greffier. The Crown witnesses are brought to the bar, and next the prisoner's witnesses, and any objection to their competency is taken and decided upon before they are sworn. They are then sworn in a body, and made to retire in the custody of the serjeant, if required; after which, one of the law officers reads the interrogatoire, and the Crown witnesses are severally called and examined by the law officers of the Crown and cross-examined by the prisoner's counsel: the prisoner's witnesses are then examined by the prisoner's counsel and cross-examined by the law officers: each member of the Court being also at liberty to put questions to the witnesses. The prisoner's counsel then addresses the Court

upon any technical objection he may have to the proceedings or indictment, and also upon the whole case. The Law Officers of the Crown then each address the Court, and are bound to lay the law of the case and every fact bearing upon it fairly before the Court; they give their "conclusions" as to what punishment they pray the Court to inflict, and, should they deem the case not proved or doubtful, they so state it. The Bailiff then sums up and generally proposes the sentence he thinks adequate to the case. Lastly, each Jurat severally pronounces his opinion, as to the guilt or innocence of the prisoner and the appropriate punishment: and the majority of the votes of the Jurats (or the Bailiff's casting vote, if the Court be equally divided) determines the guilt and the punishment. The Bailiff then communicates the sentence of the Court to the prisoner: and his innocence, or the amount of punishment awarded, is recorded at the end of the indictment.

The proceedings for offences described in the indictment as felonious (which I shall distinguish as "au Grand Criminel") are similar, as far as the pleading to the indictment and choice of Counsel. On a day subsequent to this proceeding, the Court, composed as it is for the committal of prisoners, *i. e.*, of the Bailiff or his Lieutenant, two or more Jurats, the Law Officers and Greffier, swear and examine the witnesses of the Crown separately in a private sitting, each question and answer being taken in writing accurately by the Greffier. When the whole Crown evidence is completed, and on a subsequent day, the Crown witnesses are again brought separately in private before the Court (constituted as before) to be "récolés;" they are again sworn; and, the whole of the deposition of each witness having be enread over to him, he confirms or amends it as occasion may be. On the same or a subsequent day, the Crown witnesses are a third time brought separately in private before the Court (constituted as before) to be "confrontés." On the morning of that day, the prisoner receives a copy of their first deposition and "récolement." At the sitting of the Court, each witness is sworn in presence of the prisoner and his Counsel; and, the whole of his first deposition and récolement having been read, the witness is asked whether the prisoner is the person he alludes to in his deposition under the name given. The witness is then cross-examined by the prisoner's counsel, each question and answer being taken in writing accurately by the Greffier: the Court have a right, during this proceeding, of putting any new question to the witness, which is also taken in writing with the answer, by the Greffier. The prisoner's counsel at the close of this proceeding is bound to state whether he requires any witnesses and to prove what facts generally; of this a record is taken; and on a subsequent day the prisoner's witnesses are each separately and privately examined by the prisoner's counsel and cross-examined by the Court (constituted as before); and this is also committed accurately to writing by the Greffier.

An authentic copy of the whole of these proceedings is furnished to the Law Officers and to the prisoner some days before the day of trial. The trial takes place before the Court "en corps:" and the mode of proceeding is as follows. The Interrogatoire and the whole written evidence (*i. e.* the deposition of each Crown witness in chief, his récolement, confrontation, and the deposition of the prisoner's witnesses) is read by the Law Officers of the Crown, no vivâ voce evidence being heard. After this, the prisoner's counsel addresses the Court upon the whole case. The trial proceeds as in cases au "Criminel Ordinaire."

In all cases of trials upon indictment, the verdict of Guilty of any part entails a condemnation to costs. These, in cases au Criminel ordinaire, may run from 4*l.* to 5*l.*; in cases au Grand Criminel, average 10*l.* to 12*l.*

I do not introduce, in the preceding summary or in my answers to the Commissioners questions, any part of or remarks upon the proceedings "au petit Criminel," as I do not think them relevant to the matters now under enquiry.

*Answers.*

1. I was admitted Advocate of the Royal Court in April, 1839, and continued to practise until I received the appointment of Contrôle de la Reine or Solicitor General in September, 1845; which I now hold.

2. The Royal Court, composed of the Bailiff and twelve Jurats. Their jurisdiction can be traced to the time of King John and existed previously; it extends to all offences committed in the Bailiwick, with the three exceptions detailed in the following extract from the Precepte d'Assize compiled by Commissioners sent to the Island by Edward III. in 1331.

"Excepté toutefois, que, selon l'ancienne accoutumance de la dite Ile, la punition de trois certains cas, s'ils échéent illecques, est réservée par excellence à la couronne tout seulement: c'est à savoir, le premier est de cas de Trahison, le second est de Faux Monnoieur, et le tiers est de Mettre et Apposer les mains injurieusement en la personne du dit Bailiff ou d'aucun des dits Jurés en faisant et exerçant leurs offices, desquels cas la cognoissance doit être cognue illecques, et la punition à la dite couronne."

There seems to be some doubt whether, in these particular cases, the Court ought to decide upon the guilt of the offenders; they however do so in practice; the punishment is awarded by Her Majesty.

3. Le Grand Coustumier de Normandie, as commented upon by Terrien and approved by an Order in Council of 1583, forms the basis of the Criminal Law of Guernsey. The following French authors are those principally made use of in amplification of the principles contained in Terrien:—

Jousse, Traité de la Justice Criminelle en France, 1771.

De la Combe, Traité des Matières Criminelles, first published in 1741.

Serpillon, Code Criminel, ou Comentaire sur l'Ordonnance de 1670, published in 1762.

The Common Law of England and the precedents of the Royal Court are also frequently referred to.

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4. One of the Constables of the parish in which the offence has been committed inquires into its details, and, according to its nature, either apprehends the offender and puts him in prison, or warns him to appear before the Court on the following Thursday. The Constable is bound to report the different circumstances of the case to the Bailiff and Law officers without delay, and receives their instructions, as to the custody of the person charged until he can be produced, and the ordering of witnesses to appear in support of the charge.

5. A section of the Royal Court, called la Cour Ordinaire, and composed of the Bailiff or his Lieutenant and two or more Jurats (seldom or ever exceeding four), sits publicly every Thursday in the year, and oftener if required, and disposes summarily of all cases in which the offence charged is considered, if proved, to be adequately punished by an imprisonment not exceeding one month, the whole or any part of which may be solitary and on bread and water, by a moderate fine, or, when the offender has no settlement in the Island, by his being condemned to find bail for his future good conduct or to leave the Island.

6. For the first part of this question I beg leave to refer to the preceding summary. The Constable who examines into the charge has a discretionary power to apprehend the prisoner and put him immediately into prison; as soon as an "Acte" of the Court has been passed against a prisoner, he is under the custody of the Sheriff, who is bound to be present at all sittings of the Court, and who conducts him to prison or takes bail for his appearance according to the tenor of the "Acte." The Court has also the power of accepting the "caution Juratoire" of the prisoner that he will present himself before them when called upon.

7. This question is fully answered in the preceding summary.

8. The original proceeding states the name of the Constable who produces the prisoner; the subsequent proceedings are in the name of the Law officers. The Court may, at any stage of the proceedings, direct that they be abandoned: in practice they do so in two cases: when the prisoner is admitted as evidence for the Crown, or when some error in the proceedings is discovered at any time before the commencement of the trial: in which latter case, the Law officers pray the Court to allow them to abandon the accusation in its erroneous form and to commence entirely "de novo;" if the Court approve of this, the prisoner can take no advantage of it, and no part of the previous proceedings can be made use of.

9. The first part of this question is answered in the preceding summary; the charge can be varied or altered at any time before the commencement of the trial, but, as the whole proceedings must then strictly be commenced de novo, the accused has the same time for remodelling and improving his defence as he had to prepare his original case.

10 and 11. These questions are answered in the summary.

12. He is not.

13. He is not.

14. The principal part of this is answered in the summary. One advocate only can be heard for the prisoner; but he may have the advice of a second.

15. The Constable who produces the prisoner warns the witnesses he thinks proper, and those which the prisoner may ask to be heard, to attend; and they are severally liable to punishment at the discretion of the Court if they disobey his orders. After his commital for trial, the witnesses on both sides are summoned by the Queen's Serjeant and are liable to fine for non-attendance. The Law officers are bound to use every effort for the production of the best evidence that can be procured: and any expense, required for the production of evidence for the defence, is defrayed by the Crown.

16. This question is answered in the summary.

17. In cases described in the summary as au Criminel Ordinaire, on the day of trial; in those au Grand Criminel, on the day of the confrontation.

18 and 19. These are also answered in the summary.

20. No evidence can be produced, against or in favour of the party accused, au Criminel Ordinaire, when the examination of the witnesses has commenced; au Grand Criminel, none can be produced against him when the confrontation has begun, nor in his favour after the evidence has once been closed.

21. This is also answered in the summary.

22. The former part of this question is answered in the summary. As all the written evidence is taken in presence of the Court and in fact by the members of the Court, I do not conceive that the prisoner can ever be allowed to prove that the evidence given against him is not correctly detailed. It is his Counsel's duty to see the cross-examination of the Crown witnesses and the examination of his own witnesses correctly stated.

23. The rules observed in England for examination and cross-examination of witnesses by the respective Counsel are adhered to as nearly as possible. Every possible latitude is allowed to the prisoner's Counsel in his address to the Court.

24, 25, and 26. These are answered in the summary.

27. The Court has the power of delaying the day of trial on the application of the Law Officers or the prisoner's Counsel, and for any reasonable cause. The trial once commenced is never adjourned, except, on account of the lateness of the hour, de die in diem.

28. This is answered in the summary.

29. By an Order in Council of 9th October, 1580, it is provided "that it shall not be lawful to appeal in any cases Criminal or of Correction, &c." This is confirmed in a subsequent Order of 22nd February, 1638.

30. The moment judgment is recorded, the Sheriff becomes responsible for the custody of the prisoner and for the carrying into effect the punishment. The sentence, in cases au Criminel Ordinaire, is almost universally carried into effect immediately; in cases of condemnation to death, flogging or pillory, a certain time generally elapses, and the Queen's Law Officers, Greffier and Sheriff are present when the sentence is executed. Should the prisoner be con-

demned to transportation, as this is a punishment the Court has no power to inflict, the sentence runs "est le dit A. B. (prisoner) condamné à être banni pour le terme de ans à tel établissement pénal et en tel lieu, dans les Colonies Anglaises, qu'il plaira à Sa Majesté indiquer;" and, the proceedings being sent through the Secretary of State for the Home Department, the prisoner is kept in prison until Her Majesty's pleasure be known.

31 and 32. I understand from the Queen's Procureur and Greffier that they have answered these questions at full length. I therefore consider it needless to do so, unless required.

33. The most important information for the purposes of the Commission, not already disclosed in the preceding summary, will in my opinion be derived from the examination of the Criminal Statistics now in course of preparation. As I feel satisfied that the Commissioners will give every part of the subject their best attention, it is perhaps needless to say more on this head. But the number and nature of the offences committed in the Bailiwick, the manner in which the present system works, the amount of crime as compared with the amount and description of the population, are points to which I would respectfully draw the careful attention of the Commissioners.

Another feature of some importance in our Criminal Procedure is that, when a crime has been committed, the authors of which are unknown, the Constable of the parish, on receiving directions to that effect from the Bailiff and Law Officers, summons all persons indiscriminately who may have knowledge of any circumstances connected with the crime before the Court; and they are heard in a private sitting, taking an oath that they will answer all questions except those which might criminate themselves. This proceeding is called an "enquête," and has led to the detection of many criminals, who are subsequently brought before the Court in the regular course, fresh evidence being heard previous to their committal.

34. Before entering upon the defects of our system, I would respectfully beg leave to say a few words upon its advantages and practical benefits. I think amongst its peculiar advantages may be reckoned:—

1°. The prosecution of all offences being conducted by public prosecutors paid by the Crown and bound to take notice of all infractions of the public peace.

2°. The little expense to which a prisoner is put in all cases, his being defended without any expense whatever when he is poor. By far the greater number of persons prosecuted come under the latter description.

3°. The little time lost, in cases au Criminel Ordinaire, between the committal and trial, a prisoner being seldom more than a fortnight or three weeks in prison before his trial during term, and applications for trial out of term being readily granted.

4°. The method of taking the prisoner's interrogatoire, properly conducted, is, I think, no prejudice to an innocent person, and a powerful means of discovering the guilty and ensuring their conviction. I would particularly remark, that I think every proper precaution against the abuse of this power is secured by the declaration made to the prisoner that he is not bound to answer the questions proposed and that his answers will be produced on his trial; by the charge being put into a definitive form, which cannot be altered, before the interrogatoire is commenced; by each question as well as each answer being taken in writing, thus rendering the Court responsible for every question, and enabling the defence to know on what suggestion each answer has been given, and to discuss the propriety of each question.

5°. The comparative freedom from technicalities in the indictment and forms of proceeding.

Its practical benefits will be shown from the following facts, which I think susceptible of proof.

1°. The amount of crime, taken in relation to the amount of population and the mixed character of that population, is small.

2°. The offences committed are seldom of a very serious nature.

3°. The punishments inflicted are, in the great majority of cases, very lenient as compared with those of other countries, and yet are sufficient to prevent the increase of crime.

4°. Crimes committed in the Bailiwick are inquired into without loss of time; and the offenders in the great majority of cases are detected and punished.

5°. The great majority of prisoners tried are found Guilty.

6°. As far as can be collected from evidence, I do not think a single person entirely innocent of the offence charged has been condemned within the last twenty years.

The three last points I particularly insist upon, and attribute in a great measure to the interrogatoire.

Such being my opinion respecting the practical effects of the present system, and viewing, as I do, the benefits above detailed as those of the highest importance to any Criminal Procedure, I cannot recommend any fundamental alterations in the system, though I admit that system to contain defects which I shall now detail.

1°. The ignorance in which the prisoner is kept as to the names of the witnesses to be heard against him, which appears to me an undue and unnecessary concealment. I cannot say I am quite so clear with regard to the depositions of those heard before the Committing Court, which, according to the present system, are not committed to writing. But, as the Law officers of the Crown, from their presence at the Committing Court, are in possession of all the facts stated by the witnesses, it may be suggested that the prisoner and his counsel should be present during these preliminary proceedings; I should much prefer that a copy of the deposition of each witness heard by the Committing Court should be furnished to the prisoner with his interrogatoire.

2°. The amalgamation of what appear to me ought to be distinct duties in the same persons, by the Bailiff or his Lieutenant and Jurats who have sat in the Committing Court sitting also upon the trial of the same prisoner.

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3°. The confusion and prejudice to the defence, which appears to me to arise from the prisoner's counsel being allowed to address the Court only once, and therefore being obliged to plead any error in the indictment or technical objection, and, without these being disposed of, having to address the Court upon the general facts involving the guilt or innocence of the prisoner.

4°. The manner in which the votes of the Jurats are taken, which obliges them individually to decide at the same time upon any technical objection raised by the prisoner's counsel, upon the guilt or innocence of the prisoner, upon the adequate punishment. I think this must obviously operate very prejudiciously to the course of justice.

5°. The limitation of the number of witnesses to twelve on each side.

6°. The disqualifications of witnesses from age, relationship, interest, &c. At present, no boy under fourteen, or girl under twelve, can be heard; no relation within the 2nd degree; no blind or deaf person, nor those who have any particular interest in the case.

7°. I think the whole of the proceedings peculiar to trials au Grand Criminel open to serious objections and such as will be obvious to the Commissioners. I do not know of any positive good resulting from them. It is considered by some as an advantage that the Jurats should have the means of carefully examining the evidence in important cases before the day of trial. I think this a serious prejudice to the defence. It is also said that the system is convenient when the proceedings are transmitted to Her Majesty; my opinion decidedly is that these peculiar proceedings should be done away with, and that the President's notes of the trial should be sent to Her Majesty, when required.

8°. The separate trial of prisoners when two or more are charged in a similar indictment for a joint and similar offence. This must impede the due course of justice; as evidence of the greatest importance, or a technical point involving the legality of the indictment &c., may be withheld up to the last; the prisoners tried last also may labour under the prejudice of the conviction of the first, and of the interrogatoire of each of those previously tried; and the proceedings are unnecessarily open to much confusion.

9°. The condemnation of every prisoner found guilty upon indictment to costs, which is seldom taken into consideration by the Court, and is, I think, repugnant to the dignity of the Crown, and an undue severity to the prisoner. I am aware that difference of opinion exists on this head. Should it be deemed advisable to retain the present rule, I think every person acquitted entitled to at least some part of the costs of his defence, which he now never can receive.

10°. The manner in which the sentence is recorded, which, though the prisoner may be found guilty of only one out of several counts of an indictment, states generally that he is condemned to the punishment awarded; thus leaving him under the stigma of the whole accusation, or possibly inducing the Court to acquit him altogether though guilty of part. This defect has been partially modified of late years.

11° The confiscation to the Crown or Lord of the Manor of all the property real and personal belonging to the prisoner, in all cases where he is condemned to seven years banishment from the Bailiwick, or any severer sentence entailing "La mort civile." This being a defect not peculiar to the law of Guernsey, and already much discussed in England, (See 7 Report Criminal Law Commissioner, p. 96.) I merely notice it.

The improvements to be adopted must of course much depend upon the correctness of what precedes, particularly concerning the advantages and benefits of the present system: and it is on the assumption that these advantages and benefits exist, that I would recommend the practice being improved without any fundamental alteration being introduced.

I think the members of the Committing Court should all be declared de facto incompetent to sit on the trial of a prisoner. This will entail some further change in the present system, and introduces, in my opinion, the most difficult question for consideration in the whole of our Criminal Procedure.

The most simple plan I can suggest is to declare this incompetency, limit the Committing Court to two Jurats, and leave the trial to the judgment of the remaining members of the Court under the Presidency of the Bailiff, when his Lieutenant has sat on the Committal, and vice versâ.

This would reduce the number of Jurats in all Criminal trials to nine, leaving only a margin of two for the quorum of seven.

To render this plan more practically convenient, I should see no objection in reducing the quorum of Jurats from seven to five, in all cases au Criminel Ordinaire, i. e., not described in the indictment as felonious.

To obviate the principal difficulty in the last plan, which deprives a prisoner of so many of what may be called "ses juges naturels," the second plan I would propose for the consideration of the Commissioners is to increase the number of Jurats from twelve to fourteen. Two of whom should be selected by the Court every six months (or take it in rotation) to compose a Police or Committing Court under the Presidency of the Bailiff or his Lieutenant. The number of Jurats for every trial would then be eleven, or nearly as at present.

I am strongly opposed to the introduction of any new functionaries with new powers. I think this unnecessary for the present state and population of the Island, and am more particularly anxious that the unity (if I may so express myself) of the Bailiff's attributes and powers should strictly be preserved; and that all matters connected with the administration of justice should be under his individual and constant surveillance.

The "interrogatoire" appearing to me an important and excellent ingredient in our proceeding, and one which can only be preserved by the Committing Court sitting in private and the indictment being previously framed (which last point necessitates the presence of the Law Officers), I do not see how a new tribunal could be introduced and this proceeding preserved in its present form.

John De Havilland Utermarck, Esq., Contrôle de la Reine.

A prisoner should certainly receive some days before his trial a list of the Crown witnesses.

The 3rd and 4th defects mentioned are obviated by allowing the prisoner's counsel to plead any error or technical objection, &c. before the evidence is heard, and disposing of such incident at once. For this purpose, as well as the examination of witnesses, I think the prisoner might, on payment of their fees, be allowed two counsel, both of whom might address the Court and examine witnesses, limiting the defence as now to one speech upon the evidence. I think that, after the pleadings have closed, the opinion of the Jurats should be taken seriatim, first, as to the guilt or innocence of the prisoner. Supposing him to be found guilty, that the Law Officers should then give their "conclusions" as to the punishment, and the opinion of each Jurat be again taken seriatim on that point.

The admitting of an unlimited number of witnesses for the Crown I do not consider open to difficulty. The only objection to a similar latitude on the part of the defence is that, as all the witnesses are paid by the Crown, a prisoner might put needless expense in the prosecution. I think this might be remedied by the prisoner being limited to twelve as at present, any additional number being allowed on motion by the counsel that he considers such additional number as essential to the defence.

I think the rules adopted in England (including those introduced by 6 and 7 Vict. 85.) for the age and qualifications of witnesses might safely be introduced in Guernsey.

All prisoners charged on an exactly similar indictment might be tried together, all the counsel addressing the Court one after the other and the Law Officers speaking once.

I think the record of the judgment should state exactly upon what counts the prisoner is found guilty.

I think the Court should have power to amend unconditionally, at any period during the trial before the prisoner's counsel addresses the Court upon the general issue, all errors in the indictment not material to the merits of the case, and such that by their mistatement the prisoner cannot have been prejudiced in his substantial defence.

They should also have the power to amend, upon such terms of postponement as may be deemed reasonable, all those matters in the proceedings which, though not material to the real merits, are such that by their mistatement the prisoner may have been prejudiced in his substantial defence.

I beg humbly to add that I am not for any change in the present system in connection with questions 24 and 25. I allude to this, because I am aware that our system will appear deficient upon both these heads and opposed to the English Law. I do not think any evil results either to the interests of society or to the defence of a prisoner from our mode of proceeding. The Law Officers, although heard last, are bound to lay before the Court the law and facts of each case as they may be favourable or unfavourable to the prisoner, and do in practice follow this course to the best of their ability. They ever consider themselves bound to supply any argument or circumstance, omitted by the prisoner's counsel, which may strike them as important to the defence. They in fact, although undertaking the prosecution, are also advisers of the Court.

The Court composed as at present, making due allowance for occasional errors from which no Court and no system is exempt, does, I believe, administer justice in deciding both law and fact; and I should much fear that any changes in this part of our system would not lead to any practical advantages and might introduce evils which do not now exist.

JOHN DE HAVILLAND UTERMARCK,
*Her Majesty's Contrôle.*

*Manor Place, Guernsey, July* 29, 1846.

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No. 8.

*The Answers of Robert MacCulloch, Esq., Advocate of the Royal Court at Guernsey, to the first Series of Questions.*

Robert MacCulloch, Esq., Advocate.

1. I have practised as an Advocate in Guernsey since the year 1824.

2. The only tribunal, which exercises criminal jurisdiction in Guernsey, is the Royal Court, which is composed of the Bailiff and twelve Jurats. Some doubt exists with respect to the origin of its jurisdiction: but it appears probable that it was constituted nearly in its present form by King John. Its jurisdiction extends to all offences committed within the Bailiwick, except High Treason, counterfeiting the coin of the realm, and assaults committed on the Bailiff and Jurats when in the execution of their office. In these three latter species of offence the Royal Court proceed as far as the conviction of the offender, but cannot pass sentence upon him, the punishment being left to be awarded by the Crown.

3. Such portions of the ancient custom of Normandy and of the Commentaries of Terrien thereon as have been approved by an Order in Council, dated the 27th October, 1583. In cases not provided for by the above authorities the criminal law of England, and occasionally the ancient law of France, are quoted. Former judgments of the Royal Court are also considered as authority.

4. When it is suspected that a party has committed an offence, he is taken into custody by a Constable or Assistant Constable and brought before the Royal Court, sitting as a Police Court; or, if the charge is not of a serious nature, he is merely warned by the Constable to attend at Court on a given day.

5. The Royal Court exercises summary jurisdiction in cases of minor offences, such as disorderly conduct, breaches of the peace, petty thefts and the like, in which the offence charged is considered, if proved, to be sufficiently punished by an imprisonment of nor more than one month. In such cases the Bailiff, or Lieutenant Bailiff, and two Jurats are

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*Answers to Questions.*

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Robert MacCulloch, Esq., Advocate.

sufficient to form a quorum; and there are seldom more than four Jurats present. No sentence can be awarded by the Royal Court until it has heard the "conclusions" of the Crown lawyers, who are public prosecutors, and whose functions partake of a magisterial character. The utmost punishment, which the Royal Court considers itself authorised to award when sitting as a Police Court, is an imprisonment of one month, which may be in solitary confinement and on bread and water; it also occasionally imposes moderate fines, generally varying between four shillings and one pound sterling: it may also oblige an offender, not being a native, who has no settlement in the Island, to give bail for his future good conduct, and, in default of his doing so, to leave the Island.

6. Where there is no exercise of summary jurisdiction, the witnesses are first examined separately before the Royal Court sitting as a Police Court, the Bailiff with two Jurats forming a quorum, and the Crown lawyers being present. The examination is private, and the prisoner is not allowed to be present. If the evidence is deemed sufficient to make out a primâ facie case against the prisoner, an indictment is framed by the Crown lawyers and revised by the Court. The prisoner is then brought in, the indictment is read over to him, and he undergoes an examination, called the "Interrogatoire," each question and answer of which is taken down in writing by the "Greffier" or Clerk. The doors are afterwards opened; and, after the Crown lawyers have given their "conclusions," the prisoner is committed for trial. His appearance at the trial is secured by committal to prison, or by bail when the offence with which he is charged is not of a serious nature.

7. Where the jurisdiction is not of a summary nature, the prisoner is tried before the Royal Court, composed of the Bailiff or Lieutenant Bailiff and at least seven Jurats. The members of the Court who have sent the party to trial are capable of acting as members of such Court.

8. The proceedings against the accused party are invariably instituted by the Crown lawyers with the sanction of the Police Court. The Crown lawyers, as before observed, are public prosecutors. They cannot abandon the proceedings of their own authority, but may do so at any stage after having obtained the permission of the Court. In practice there are only two cases in which proceedings are abandoned after a committal has taken place. 1st. In order to enable one of several prisoners charged with the same offence to become evidence for the Crown. 2d. When an error in the proceedings or flaw in the indictment is discovered before the commencement of the trial. In this latter case the Crown lawyers, with the sanction of the Court, abandon the incorrect indictment and commence the proceedings de novo, the former proceedings being entirely cancelled and not susceptible of being referred to either for the prosecution or for the defence. Should a prosecution against one of several prisoners charged with the same offence be abandoned for the purpose of enabling such prisoner to become evidence for the Crown, and should he afterwards refuse to give evidence, I conceive that proceedings might be recommenced against him.

9. The charge against the party accused is put into a definite form in writing before his "interrogatoire" is taken. The Crown lawyers cannot subsequently vary the form or substance of the charge, but may, as before stated, abandon the proceedings and recommence them. When summary jurisdiction is exercised by the Police Court, the charge is not reduced into writing, but is merely stated verbally before the examination of the witnesses takes place.

10 and 11. The form of proceeding is the same, whether the party admits the facts alleged against him but denies their relevancy to support the charge, or whether he simply denies the facts. The trial commences by an examination of the witnesses on both sides; and the prisoner's counsel and the Crown lawyers are afterwards heard both on the law and the facts of the case.

12 and 13. A party accused, who denies the relevancy of the charges, is not thereby concluded as to the facts; and a party who denies the facts is not thereby concluded as to their relevancy.

14. When summary jurisdiction is exercised by the Police Court, the party charged may employ an advocate: but it is considered that such advocate has no right to be heard except on points of law, although in practice he is allowed to speak on the facts of the case. After a prisoner has been committed for trial, he is allowed to make choice of an advocate to conduct his defence when first called upon to plead to the indictment; and the advocate chosen by him is bound to undertake the defence, whether the accused have the means of paying him or not.

15. Witnesses are bound to attend, at any stage of the proceedings, when required, under pain of fine and imprisonment, and to produce such documentary evidence as they may have in their possession.

16. Evidence is first received at the examination which takes place before the Police Court, as stated in the answer to the 6th question.

17. In order to the clear understanding of my answers to this and several of the following questions, it is necessary for me to give here a short statement of the mode of proceeding in different cases. When the proceeding is a summary one, the party accused hears the evidence produced against him as it is given. There are two modes of proceeding when a prisoner has been committed for trial. If the offence with which he is charged is not described in the indictment as a felony, he does not hear the evidence produced against him until the trial takes place, when the witnesses are examined *vivâ voce* and cross-examined by his counsel. If he is charged with a felony, days are appointed, soon after his committal, for the examination of the Crown witnesses. They are examined separately

and in private before the Royal Court, the Bailiff, and two Jurats forming a quorum, and the Crown lawyers being present; and their evidence is taken down in writing by the Greffier. Neither the prisoner nor his counsel is present. After the Crown witnesses have all been thus examined, another day is appointed for what is termed the "récolement," which also takes place in private, and in the absence of the prisoner and his counsel. The witnesses are again brought in separately and sworn, their depositions are read over to them and they are asked whether they confirm what they have declared, and whether they have any amendment to make to their testimony. They may also be further questioned by the Crown lawyers and the Court. Their answers are taken down in writing as before. This is followed by the "confrontation," which also takes place in private, the prisoner and his counsel being however present. Each witness is called in and sworn separately, and his original deposition together with his "récolement" is read over by the Greffier. Formerly, this was the first moment at which the party accused was allowed to hear the evidence produced against him; but now, by virtue of the provision of an Order in Council, dated 19 June, 1844, he is entitled to a copy of the depositions of the witnesses on the morning of the day on which the "confrontation" takes place. At this stage of the proceedings his counsel is allowed to cross-examine the witnesses, the questions with their answers being taken down in writing by the Greffier. Further questions may also be put by the Crown lawyers and the Court.

18. When the proceeding is a summary one, the party accused may produce evidence on the spot to meet the evidence produced against him: and, in order to secure the attendance of his witnesses, the constable or assistant constable by whom he is taken into custody is bound to ask him to give him the names of his witnesses, and to warn them to attend. When a prisoner has been committed for trial and the offence with which he is charged is not described as a felony, he cannot bring forward his witnesses to meet the evidence produced against him until the trial takes place. When a prisoner is charged with a felony, he is called upon, as soon as the "confrontation" has taken place, to name his witnesses and to state the facts which he is desirous of proving. Another day is then appointed by the Court for the examination of his witnesses, which also takes place in private, in his presence and in that of his counsel, the Crown lawyers being allowed to cross-examine them, and the whole of the questions and answers being reduced to writing by the Greffier.

19. The period at which the party accused is allowed to question the witnesses produced against him is defined by my answer to the previous question. The extent to which he is allowed to cross-examine them is discretionary with the Court; but very great latitude is given him.

20. When a party is charged with a felony, the Crown lawyers cannot produce any fresh evidence after the "confrontation" has been completed, and the party accused cannot produce any fresh evidence after the examination of the witnesses named by him on the completion of the "confrontation" has taken place. In all other cases, no fresh witnesses can be produced on either side after the witnesses present in Court have been sworn. The witnesses on both sides are all sworn together, before any one of them is examined.

21. No evidence is taken down in writing except in indictments for felony as previously explained.

22. The evidence taken down in writing in cases of felony is read at the trial, no "vivâ voce" evidence being then received. I do not conceive that it would be allowable, either against or on behalf of the accused party, to offer proof that the written evidence did not correctly represent the whole of what had been deposed to; for this would amount to a charge of improper conduct against the Court before whom that evidence was taken and reduced to writing.

23. The counsel of the party charged is entitled to be heard both on questions of fact and law, to examine his client's witnesses, and to cross-examine the witnesses for the prosecution. In cases, however, in which summary jurisdiction is exercised by the Police Court, it is considered that in strictness he has no right to address the Court on questions of fact, although in practice he is permitted to do so.

24. The Crown lawyers, as public prosecutors, have the privilege of being heard last. It must here be observed that, as their functions partake of a magisterial character, they are bound to move the Court to acquit the prisoner, if they do not consider the evidence against him conclusive.

25. The Bailiff and Jurats decide both the law and the fact. All questions are decided by the votes of the majority of the Jurats present, the Bailiff or Lieutenant Bailiff merely summing up the case, and having no vote except when the votes of the Jurats are equally divided, on which occasion he gives a casting vote.

26. By the majority of the Jurats present, the Bailiff having a casting vote when they are equally divided.

27. The Court has the power of adjourning or suspending its proceedings at any stage and for any cause: but this is never done after the commencement of a trial, except it is found impossible to finish it on the day on which it is commenced. And in such cases it is customary to complete the examination of the witnesses before an adjournment takes place.

28. The incidents to accusation and trial appear to me to be sufficiently brought forward by my preceding answers.

29. No appeal is allowed on either side in any criminal proceeding.

30. The Sheriff is bound to see the judgments of the Court carried into effect. The Crown lawyers and Greffier must be present at all inflictions of capital or corporal

punishments. When a person is sentenced to an imprisonment, he is lodged in the common gaol of the Island in the custody of the gaoler, who is subordinate to the Sheriff. When the punishment is a fine, the offender's person or effects may be taken in execution or his real estate proceeded against. When the sentence is banishment, the offender is lodged in gaol until he can be sent out of the island. When transportation is inflicted, the convict remains in gaol until the pleasure of the Sovereign in Council has been made known with respect to the place to which he is to be taken.

31. As I understand that the Crown lawyers have furnished the Commissioners with the forms in question, I do not think it necessary to multiply copies of them.

32. The Bailiff is appointed by the Crown by Letters Patent, and holds office during the Royal pleasure. The Lieutenant Bailiff is appointed by the Bailiff from among the Jurats. The Jurats are elected by the States of the Island, composed of the Bailiff and Jurats, the Rectors of Parishes, the Queen's Procureur or Attorney General, and the Constables and Douzeniers of the different Parishes, in all 222 members. The Jurats are elected for life, and can only be discharged by the Sovereign in Council. The Crown lawyers and Greffier, or Registrar, are appointed by the Crown by Royal Commission, and hold office during the Royal pleasure. The Sheriff is elected for life by the States, in the same manner as the Jurats. The Constables are elected by and from among the rate payers of their respective parishes, and serve for one year. The Advocates are called to the bar by the Royal Court, and are limited to six, exclusively of the Crown lawyers, who also practise as advocates in civil cases.

33. There are certain actions which, although brought with reference to civil rights, are treated as partaking of the nature of criminal proceedings, and are termed mixed actions; such are actions for the recovery of damages in cases of battery, assault, libel and slander, termed "causes en adjonction." And also cases of Clamour of Haro and Novel Disseizin. In all these cases one of the Crown Lawyers must be adjoined to the plaintiff and the other to the defendants and they act as the advocates of the parties and are paid by them.

34. (1.) The chief defect which exists in our present system is the multiplicity of functions performed by the Royal Court in criminal cases. The remedy which I would suggest is the formation of an inferior Criminal Court, distinct from the Royal Court, to act as a Court of correctional police and of criminal instruction. In the constitution of this tribunal, I should like to see the fundamental principles upon which our institutions are based fully recognised and preserved: and I would therefore object to the duties in question being performed by any single salaried officer. My plan would be to let six magistrates (who might be called Justices of the Peace) be elected by the States, in the same manner as the Jurats of the Royal Court, which six magistrates should constitute the tribunal in question under the presidency of a salaried officer. These magistrates might sit in rotation two or three at a time, changing their turn of duty every month or every three months as might be found most convenient. I am inclined to think that they ought to have a property qualification, at least equal to that which is at present required for Douzeniers; and, in order to give them some influence in the Island, I am of opinion that they ought to be *ex officio* members of the States and of the Court of Chief Pleas. I think that the best president would be a Lieutenant Bailiff. He ought to have such a salary as would secure the services of a properly qualified person; for the duties which he would have to perform require a considerable degree of judgment and of legal knowledge. The principal difficulty which presents itself to my mind is the mode of providing for the performance of the duties of the "Ministère public." I am most decidedly of opinion that the constant presence in court of a public prosecutor is indispensable. This system is so thoroughly established here and works so well, that it ought on no account to be departed from. The first idea that naturally arises is, that the Procureur and the Comptroller, or either of them, might attend, as they do at present: but I much doubt whether this would be practicable; for I am quite certain that this tribunal would be required to sit oftener than one day in the week; and, should it ever happen to sit on the same day as the Royal Court, the Crown lawyer attending it would be prevented from attending to his private business in the superior Court; and, even if it did not sit on the same day as the Royal Court, the time of the Crown lawyers would be so fully taken up in the performance of their public duties as to leave them no time for private practice. Their salaries might, it is true, be raised so as to enable them to give up their private business: but I do not think it at all desirable that such a system should be established. It would in process of time have the effect of making the Procureur and Comptroller mere criminal lawyers, and thus disqualify them for the due performance of their important duties in the Court of Chief Pleas and as the advisers of the Court. I am therefore inclined to think that the duties of the "Ministère public" would be best performed by a distinct officer with a competent salary, to be called the "Substitut du Procureur de la Reine." This officer should have no public duties to perform in the superior Court, with the exception of being permitted to examine the witnesses on the trial of a prisoner; for I think that the person, who has examined the witnesses at the time of the committal, is more competent than any one else to conduct the examination on the trial. Besides the President and the Crown lawyer, it would be necessary to provide a Deputy Greffier, Deputy Sheriff and Deputy Sergeant. These might be named by the Greffier, Sheriff, and Sergeant respectively, subject to the approval of some superior authority, and they ought likewise to have salaries. The Deputy Greffier should be fully competent to take down depositions in the same manner as the magistrates' clerks do in England. This tribunal might be entrusted with the same powers as are now exercised by the Royal

Court when sitting as a Police Court or Court of Criminal Instruction, with power, however, to reserve points of law for the decision of the superior Court. It should also have cognizance of prosecutions for fines under local ordinances, subject however to an appeal on points of law to the Royal Court, when the fine sued for exceeded a certain amount.

(2.) The present system of taking down the evidence of the witnesses in writing in indictments for felony is most objectionable, and ought to be abolished. The witnesses ought to be examined *vivâ voce* on the trial in every case, and the President's notes should be declared to be a sufficient record of the evidence, in cases where it would have to be laid before Her Majesty in Council.

(3.) Several of the objections to the admissibility of witnesses by reason of relationship, interest, hatred, want of age &c. are highly prejudicial to the due administration of justice and ought to be done away with.

(4). At present only twelve witnesses can be produced on each side. This number is generally sufficient, when a party is charged with only one offence; but, when the indictment charges a party with several offences, it is manifestly insufficient.

(5.) The party charged with an offence is not allowed to hear the evidence produced against him until the "confrontation" takes place, when the indictment is for felony, and until the trial, when the offence with which he is charged does not amount to a felony. I think that the depositions of the witnesses examined at the time of the committal should be reduced to writing and a copy furnished to the prisoner, some time before the trial, together with a list of any fresh witnesses intended to be called by the Crown lawyers on the trial.

(6.) The present system of obliging the prisoner's counsel to argue technical objections, pleas in bar, questions of law, questions of fact, and pleas in mitigation of punishment at the same period of the trial is most objectionable. He ought to be permitted to argue any preliminary objection before the examination of the witnesses; and such objection should be immediately disposed of.

(7.) The mode now adopted of taking the opinion of the Jurats, at the same time, both upon the guilt or innocence of the prisoner and also upon the punishment to be awarded, is open to serious objections. I think that the President should put to them the question whether the prisoner is Guilty or Not guilty by itself, and afterwards, if he is found Guilty, call upon them to award the punishment. Were this alteration effected, some new regulations would have to be made as to the manner in which the Crown lawyers are to give their "conclusions." I would suggest that, after a prisoner has been found guilty, they should be called upon to state the punishment they consider commensurate to the offence, which they should be bound to do as briefly as possible, abstaining from all comment on the circumstances of the case.

(8.) At present, when an indictment charges a person with several offences and he is found Guilty of only a part of them, it is not customary to state in the judgment upon which of them he has been convicted. The Court should be bound in such case to state distinctly in their act that the prisoner has been found Guilty of such and such offences and acquitted on the other charges.

(9.) When two or more prisoners are indicted at the same time for the same offence, much inconvenience and confusion arise from trying them separately, as is done at present. I think that they ought all to be tried together, the counsel of the several prisoners being heard after the whole of the witnesses in all the cases had been examined.

(10.) The system of adjoining one of the Crown lawyers to the plaintiff and the other to the defendant in causes "en adjonction," Clamour of Haro and Novel Disseizin is very objectionable. I see no reason why these actions should not be brought in the first instance in a purely civil form, reserving, however, to the Crown lawyers the right of becoming parties *ex officio*, in the event of their deeming it necessary to do so in order to protect the interests of the Crown or of the public. In no case, however, ought they to be allowed to receive fees from the parties, much less compel the parties to employ them as their counsel, as they do at present.

(11.) In all cases in which a prisoner is sentenced to death, or to banishment or transportation for a period of not less than seven years, the whole of his property real and personal is confiscated to the Crown, or to the Lord of the Manor. I would venture to suggest the propriety of abolishing confiscation altogether.

I cannot bring this document to a close without observing that, notwithstanding the defects which exist in the criminal law of Guernsey, the system as a whole works well. The best proof of this is the fact that the criminal is seldom, if ever, an object of public sympathy. Allowing for occasional errors of judgment on the part of the Court, an evil which will ever exist even in the most perfectly constituted tribunal, justice is fairly administered. I do not believe that, since I have been in practice, a single instance has occurred in which a person totally unconnected with the perpetration of the offence with which he was charged has been found Guilty. A strong safeguard against the commission of any act of gross injustice on the part of the Court arises from the circumstance that the Jurats hold office for life, and that their acts are continually scrutinized by the public, by whose representatives they are elected. The amount of crime in Guernsey is small in proportion to the amount of its population and to the mixed character of that population; and serious offences are of rare occurrence. Crime rarely remains long undetected. The punishments inflicted, though lenient, are found sufficient for the repression of crime. The absence of a penal code, though it may appear at first sight a serious defect, is in practice an advantage, as it enables the Court to proportion the punishment to the offence better than if they were tried by inflexible rules: and the peculiar position of the Court,

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*Answers to Questions.*

SERIES I.

Robert MacCulloch, Esq., Advocate.

joined with the circumstance that they cannot award any punishment until they have heard the "conclusions" of the Crown lawyers, who are bound to point out such circumstances as may appear favourable to the party accused as well as those which tell against him, afford an efficient check against the exercise of undue severity. The "interrogatoire" of the accused party, taken as it is after the indictment has been framed and conducted with fairness, as I believe it in general to be, I consider highly useful for eliciting the truth, and by no means disadvantageous to an innocent man. On the whole I should view with much regret any attempt to overturn the fundamental principles of the system of criminal jurisprudence existing in this island, and to which system the inhabitants are generally attached; believing, as I do, that a few improvements, of the nature of those which I have suggested, will render it in every way suited to the circumstances of the Island, and secure in every respect the due administration of criminal justice.

ROBERT MACCULLOCH, *Advocate.*

*Guernsey, August* 1, 1846.

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No. 9.

Henry Tupper, Esq., Advocate.

*The Answers of Henry Tupper, Esq., Advocate of the Royal Court of Guernsey to the first Series of Questions.*

1. Practice as an advocate of the Royal Court during sixteen years.

2. The Royal Court of Guernsey. Their jurisdiction appears to have originated shortly after the alienation of Normandy in 1204, when Constitutions were made, the original of which is not extant; these Constitutions have, however, been frequently acknowledged, even before the Sovereign in Council, and the fifth article runs thus:—

Ipsi duodecim in quâlibet Insulâ in absentiâ justiciariorum, et unâ cum justiciariis, cum ad partes illas venerint, debent judicare de omnibus casibus in dictâ insulâ qualitercumque emergentibus, exceptis casibus nimis arduis, et si quis legitimé convictus fuerit a fidelitate Domini Regis tanquam proditor recessisse, vel manus injecisse violentas in Ministros Domini Regis, modo debito officium exercendo.

The Precepte d'Assize of Edward the 3rd (1331) in reference to the Jurats of the Royal Court, moreover states that, "ont iceulx la connaissance, jurisdiction, précognition et jugemens en la compagnie du Baillif de toutes matières de causes civiles et criminelles eschéantes en la dite Isle toutes fois et quantes." These powers have been confirmed by various charters and orders in Council, of which one so lately as the nineteenth of June, 1844, in relation to the Police Court.

3. The twelfth Book of Terrien's commentaries on the Norman law approved and confirmed with modifications as the law of Guernsey by an order in Council of Queen Elizabeth, of the 27th October, 1583. The several English and French authors on criminal jurisprudence are also frequently cited, not as law, but as authorities to guide the Court.

4. A Constable (of whom there are two in each parish, with four assistants and several special constables in the Town Parish), on hearing of an offence, secures the person of the offender, and, if he judge necessary, lodges him in jail, when he is considered bound within twenty four hours to report the case to the Bailiff, the president of the Court, and to the Crown Lawyers, the public prosecutors of the Island, who usually direct the party to be brought before the Police Court, which sits on Thursdays, or if needful more often.

5. The Police Court is composed of at least the Bailiff or his Lieutenant and two Jurats, who, on the requisition of the Crown Lawyers, proceed at once to hear the case if a misdemeanor not requiring a more solemn trial, and award punishment of a fine, or imprisonment to the extent of one month and no more.

6. The witnesses named by the Constables and those, if any, named by the accused are heard in private. The indictment is made out. The interrogatory of the prisoner is also taken, and the committal is ordered. If the prisoner be charged with a lighter offence than felony, he is tried Au Criminel, and the evidence of the witnesses is taken vivâ voce; if he be charged with a felony and tried Au Grand Criminel, the evidence is taken down in writing. If the accused be committed, his future appearance is secured either by bail or imprisonment.

7. The trial is heard before the full body of the Royal Court, composed of the Bailiff or his Lieutenant and at least seven out of the twelve jurats who constitute the Royal Court. The two or more Jurats, who sat in the Police Court and sent the accused to trial, are capable of acting and some usually sit as members of the full Court.

8. The proceedings are instituted by the Queen's Procureur and Comptroller, as public prosecutors; and, when once the committal has been ordered by act of Court, the Crown Lawyers may move the Court on the trial to acquit the prisoner; but of themselves these functionaries have no power of causing the proceedings to be abandoned.

9. At the committal, the act of indictment is drawn up; the public prosecutor may subsequently take steps to correct errors of form or substance. This must be done previous to hearing the evidence for the trial; and, when this is done, the accused would be entitled to alter his interrogatory.

10. Witnesses are privately heard: and, if the Court commit the accused for trial, the Law officers of the Crown, as usual, frame their indictment: if he deny the relevancy of the facts, the accused pleads Not guilty; if he pleaded Guilty, witnesses would equally be

called to prove the case on the trial: and, after hearing all the objections of the accused both of law and fact, the Court determines the relevancy or otherwise.

11. The same as above, the Court, on the facts as proved by evidence, acquitting or condemning.

12. If he deny the relevancy, he pleads Not guilty, "et au reste se référe à son interrogatoire:" and, on the trial, the Crown Lawyers are still bound to prove the facts alleged constituting the crime, and the accused has full liberty to plead every exception of law or fact as to the relevancy.

13. No. He can on his trial plead every exception, both of law or fact, he thinks proper.

14. Yes. To one counsel only to plead the case. The accused himself selects his counsel from among the members of the bar. When the accused has no means of defraying the expense of his defence, any member of the bar whom he may select is bound to undertake it and to act gratuitously. If the accused have means, the counsel is entitled to payment. The accused sometimes avails himself of the additional assistance of one or more advisers: and it is customary to allow an adviser, if a member of the bar, to assist the pleading counsel in the examination of the witnesses.

15. The Crown Lawyers, as public prosecutors, have authority over the executive officers of the Court and over the Police of the Island to compel witnesses to appear and to produce what documentary evidence they may require; and refusal would be treated as contempt of Court and punished by fine or imprisonment. The accused is entitled to claim from the Crown Lawyers the same exertions on their part to bring forward the evidence for the defence; and they are bound to cause his witnesses to be duly subpœned. This power can be exercised during all the stages of the proceedings where evidence is admissible.

16. Previous to the committal, evidence is first received; and it is taken in presence of the Bailiff or his Lieutenant and the Jurats composing the Court, the Crown Lawyers and officers of the Court.

17. If the accused be tried feloniously "au grand criminel," when all the evidence is taken down in writing; a copy of the evidence is first given to him or to his counsel previous to the "confrontation;" and at the confrontation he may cross question the witness on the evidence, and name his witnesses to rebut the evidence brought against him. If he be tried "au criminel," he does not know precisely the evidence to be brought against him except on the day of trial.

18. "Au grand criminel," after all the evidence of the Crown is taken, he is called upon to name his witnesses, and their examination is proceeded with after those of the Crown; "au criminel," the witnesses of the accused are heard on the trial immediately after those of the Crown.

19. Previous to committal, the witnesses are heard in the absence of the accused. "Au criminel," when the trial is heard vivâ voce, the Crown Lawyers may bring twelve witnesses, and the accused twelve witnesses only. And both parties have full liberty to cross question the other parties' witnesses. "Au grand criminel," the accused and his counsel have only knowledge of the evidence against them on which the indictment is based just previous to the "confrontation" with the twelve witnesses of the Crown, when he may cross question them; on his handing to the Crown Lawyers the names of twelve witnesses for the defence, they are bound to cause them to be examined.

20. "Au grand criminel," fresh evidence for the prosecution cannot be produced after the "récolement" and "confrontation" are complete; when, all the evidence for and against being in writing, the accused is sent to judgment which is pronounced on the evidence in writing; "Au criminel," the accused can bring no further evidence when once the witnesses for the prosecution and those of the defence have been sworn.

21. "Au grand criminel," after the committal, all the evidence is in writing. "Au criminel," none.

22. As the accused is entitled at the "confrontation," which takes place immediately after the re-examination or "récolement," to cross question the witnesses, copy is taken of the deposition on cross examination. I have never seen the accused offer to prove that the written evidence was not a fair transcript of the verbal declaration of the witnesses; but I conceive he would not be allowed, after the "récolement" and "confrontation" "faite et parfaite," to adduce further evidence of any kind.

23. After the examination of witnesses, which the counsel for the prisoner is at full liberty to cross question, he is still at full liberty in his pleading to avail himself of any question of law or fact or both, which may tell in favor of the prisoner.

24. The Crown Lawyers as public prosecutors are heard last. (N. B. This requires revision). The counsel for the defence is compelled to plead before they are heard.

25. The Bailiff or his Lieutenant and at least seven out of the twelve Jurats of the Royal Court decide all questions both of law and fact.

26. By the Royal Court composed as above.

27. The Court has power to adjourn or suspend its proceedings; but, I conceive, when once the witnesses are sworn, neither prosecutor nor accused can legally claim to have the case suspended in order to produce further evidence. Should, however, the counsel of the accused offer to produce further evidence to rebut any special fact deposed against the accused, if essential to the ends of justice, I think the Court would be justified in allowing the production. But such production rests entirely in the discretion of the Court.

28. We conceive the above to be sufficiently explanatory; we shall merely add that, when an accused is tried "au grand criminel," when all the evidence is taken in writing,

he can on the trial be adjudged to loss of life or limb, to banishment for life or a term of years, to transportation, and to civil death entailing confiscation of his estate; when the accused is tried "au criminel," neither of these can ensue, but execution of sentence is immediate. In the first instance, "au grand criminel," he has no legal means afforded of appealing to the mercy of the Sovereign, the period however elapsing between the judgment and execution, which is never less than six days in cases of capital punishment, allows time for a petition to the Sovereign.

29. Neither of the parties have right of appeal. On incidents arising during the proceedings reference is at once made to the Court, which decides finally.

30. The accused is in the custody of the Sheriff, who causes the sentence to be executed: but the Crown Lawyers are bound to be present to see the sentence properly carried out. If, in case of life or limb, the accused through his counsel manifest a desire of appealing to the mercy of the Soveriegn, the Royal Court, although not bound to suspend the execution, always most readily grant delay to afford the requisite time.

31. As reference is, I understand, made to the Greffier and Crown Lawyers, who have these forms in their books, it would be useless to multiply them.

32. The Bailiff is chosen by patent from the Crown and holds his office during pleasure. This is decidedly wrong: it should be "quamdiu se bene gesserit." The Lieutenant Bailiff is chosen by the Bailiff invariably from among the Jurats, but I believe not necessarily so; he holds the office during pleasure only. The Jurats are elected by the States of the Island from among "les plus sages, loyaux, discrets, et riches:" they are elected for life, and can be discharged only by order in Council. The Sheriff is also elected for life by the States, and he names his deputy or deputies.

The Crown Lawyers, and Greffier or registrer are appointed by commission from the Crown, and hold office "durante bene placito."

The advocates are appointed and sworn by the Court: they are limited to six, independent of the Crown Lawyers who plead as advocates in civil cases. The number is seldom full; for, as the business is not lucrative, there are seldom more than four practising at the bar. This is the case at present.

33. All cases of recovery of damages in minor assault, defamation, libel, or slander must be entered as a mixed criminal action, on the assumption that the peace of our lady the Queen has been broken and that part of the damages are due to the Crown. The Crown Lawyers claim to act in all these cases, one for the plaintiff and another for the defendant, each party being at liberty also to employ a member of the bar. But by the law, as it now stands, the case cannot proceed without the "Adjonction" of the Crown lawyers. This is worse than a useless form: it entails unnecessary expense on the parties, the Crown derives no advantage, the fines asked for and imposed being trifling in amount. The public service suffers from the strange exhibition of one officer of the Crown claiming in the name of the Crown damages for the Crown, the other declaring that no damages are due and that the Crown does not ask them. But, worse than all, the Crown Lawyers have, in the recent case of Sir William Collings *v.* Major General Napier, the Lieutenant Governor, assumed the right of refusing to act at all for the plaintiff, and thus causing him a denial of justice. Hence the law provides but one form of remedy: and this form can be withheld at the caprice or owing to the pusillanimity of the Crown Lawyers, who are ministerial officers only, and not judges.

In all these cases the Crown Lawyers should act for neither plaintiff nor defendant. But, when, on discussion of the case, it became apparent that the public peace had been broken or endangered, then, on the requisition of the Crown officers, a fine to the Crown should be imposed on the party in fault, or on both if needful. At any rate it should not in such cases be compulsory to employ a Crown Lawyer. The dignity of their office, the administration of justice, and the service of the Crown, would all three derive advantage from this change.

*Infraction of Ordinances.*

The same objection exists as to the right of a Law officer of the Crown to plead for the defendant, in cases where the Crown, a public officer, or an informer sues through the Crown Lawyers, "les officiers du Roi joints," for the fines or penalties arising out of a breach of the ordinances or police regulations of the Island. The one, in the name of the Crown, first expatiates on the utility of the ordinance, and the necessity of repressing its infringement. The other also, on behalf of the defendant and in the name of the Crown, ridicules the ordinance and eulogizes its infringement as praiseworthy.

In these cases the plaintiff should select which of the Crown Lawyers he chose: but the other, out of respect of his public office, should never plead for the defendant.

34. 1°. It is not fitting that the committing Magistrates should sit on the trial of the accused.

2°. The accused should be present with his counsel at the examination of all the witnesses both before the committal and after, in order that he may know the evidence to be brought against him.

3°. Twelve witnesses should be allowed both to the prosecution and to the defence on each charge in the indictment; and the number should not be restricted, as at present, to twelve each, on the whole accusation, let it contain ever so many separate charges. Such was the law, but a vicious practice has crept in. (Terrien, page .)

4°. The counsel for the prisoner should speak after the public prosecutors.

*Observations.*

The criminal law of the Island, sufficiently precise in its forms, is extremely vague and undefined in the punishment it awards. This evil is, however, not so serious as may appear at first sight; and in practice the system works well. Every case meets with a rigid investigation; the punishments are mild; and the public is perfectly satisfied with the administration of Criminal justice.

It is also theoretically very unsound that the committing Magistrates should form part of the Bench that try the accused: and it would be well if this could be remedied by the appointment of an inferior Court, composed of at least a president with a salary (who might be the Lieutenant Bailiff), and to be assisted by at least two assessors out of four or six to be chosen by the States, as are the Jurats.

The assessors I hold to be indispensable; for in no case should the decision and punishment be left to the erring judgment of one man, even were he provided with the most explicit code of laws. This Court might also do the duties of coroner, try police cases, and perhaps all trifling civil cases. But these appointments would require a Staff: and, to be efficient, the President and Staff must be paid; and I am not aware whence the funds are to be derived. As I have observed, the evil is not so great as at first appears. In a small community such as Guernsey the same division of duties that obtains in a large county cannot be expected. The functions of the Magistrates are naturally much more multifarious. This is an evil which is unavoidable, and is in a great measure corrected by the circumstance of the Court being multitudinous. The error, the severity, or the lenity, if any, in one Magistrate is tempered by the judgment and discretion of the others; and justice is administered impartially and in mercy.

*Confiscation.*

I may be permitted to suggest the propriety of abolishing confiscation of property as a consequence of condemnation to civil death. I do not believe that confiscation has ever operated to deter from the commission of crime. It is a law instituted more to punish political infidelity to the suzerain, rather than as an augmentation to the punishment inflicted for crime; and the pecuniary advantages that have been derived by the Crown are inconsiderable. Whereas the widow and orphan are left, not only to deplore the stigma of crime and condemnation, but also the ruin and misery consequent on absolute destitution.

The continued existence of this law, even modified as it has been in England, is a blot on the jurisprudence of the country. A change is the more requisite in Guernsey, where confiscation is absolute, and where the Crown revenue is barely sufficient to cover the expenditure, and where, notwithstanding, the Crown Lawyers, as public prosecutors, have part of their salary dependant on the existence of a surplus of revenue over expenditure. The Crown Lawyers are doubtless honorable men: but the duty and the interests of men entrusted with the administration of justice should never clash; too frequently has the community seen a public wrong committed to serve a private end. Confiscation should be abolished altogether: and the salary of the officers of the Crown not allowed to remain contingent on a revenue which partly arises from fines awarded in lieu of imprisonment in cases of minor offences.

I believe that, however undefined the punishments of the law may be, the whole community would deeply regret and deplore the introduction of any fundamental alteration in the Criminal jurisprudence of the Island.

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## No. 10.

*The Answer of Peter Jeremie, Esq., Advocate of the Royal Court of Guernsey, to the First Series of Questions.*

Peter Jeremie, Esq., Advocate.

1. The knowledge which may have been gathered from the pursuit of seventeen years, as an advocate.

2. The Criminal and Police Courts, which are composed of the Baliff or President and twelve Jurats or Judges. In Criminal cases, as contradistinguished from petty or minor offences, the Bailiff presides with at least seven Jurats; in Police cases he presides with at least two Jurats. The Royal Court is understood to have been established by King John; its jurisdiction in Police and Criminal cases extends over all offences committed in the Island, except high treason, coining, and laying hands on the Bailiff in the discharge of his functions, in which three cases the Court indicts the prisoner and takes the evidence, but the Sovereign in Council pronounces judgment.

3. Terrien; and authors generally followed in the English Courts; Serpillon, Jousse, and the French Criminal Ordinance of August, 1760, are also not unfrequently alluded to upon questions arising from the proceedings; but punishments are arbitrary, each case being decided on its peculiar merits.

4. The Constable or any Police officer, either with or without the authority of the Bailiff or Chief Judge or the advice of the Law officers of the Crown, apprehends him and puts him in custody of the jailor: if the Police officer do this on his own authority, he usually acquaints the Bailiff and Law officers of the prisoner's detention within twenty four hours.

5. In all cases, when the offence does not amount to a crime or is not a bailable one.

6. He is sent to prison; his interrogatory is taken in writing and witnesses are heard;

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and, if from their evidence there appears reasonable ground for supposing that a conviction will ultimately follow, he is, when the offence is not bailable, committed to prison to take his trial.

7. The Criminal Court composed of the Bailiff and at least seven Jurats. The Bailiff and Jurats, who first enquired into the charge and committed the prisoner may, and most frequently do, judge at the trial.

8. The proceedings are instituted by the Crown officers. They may abandon the proceedings at any stage; but, if the abandonment is not a formal one, if it precede committal, I do not apprehend that by such abandonment the suspected party would be discharged were fresh suspicions to arise against him.

9. At the commencement of the proceedings the charge is put against the accused in a definite shape. It may, however, be varied until the accused is finally committed, and the evidence ordered on the charges set forth against him; after which process, issue being joined, the charge cannot be varied. The accused stands his trial upon an indictment in the form in which the charge has been definitively drawn out and delivered to him.

10. The Bailiff and Jurats decide upon the merits of such relevancy. If found irrelevant, the prisoner is discharged; if relevant, witnesses are ordered and the trial proceeds in the ordinary way by condemning the prisoner to such punishment as the nature of the case deserves.

11. Witnesses are ordered to inquire into their veracity.

12. No: he may plead both a denial of fact and relevancy at the same time; and by the admission of either he is not precluded the benefit of the other.

13. He is not.

14. He is entitled to the assistance of counsel, and he may have as many advisers as he pleases. But one counsel can be heard on his behalf before the Court. Both counsel and advisers are selected by himself; and, if he cannot defray the expense attendant on their services, they must go without, as they most frequently do.

15. He has the same means as the Crown officers possess as public prosecutors.

16. It is received at the onset of the proceedings, and is taken by the Bailiff and Jurats who attend the ordinary Court, which is generally composed of the Bailiff or President and two Jurats; but, when the offence is a serious one, a greater number of Jurats are convened. It need not be stated that the Crown officers, as public prosecutors, attend all the meetings of the Court; and they, in fact, may be said to direct all their preliminary proceedings. The evidence is different in crimes, misdemeanors and offences; in the former the evidence is taken in writing; in the latter, which entail a less punishment than seven years' banishment, the evidence is heard vivâ voce.

17. After his committal to stand his trial.

18. In petty offences at the trial. But, when the proceedings are taken in writing, as is the case when the crime entails a punishment amounting to seven years' banishment which entails the confiscation of his estate, the evidence is sent in by the accused immediately after that of the prosecutor has been produced; and it is understood that the evidence to be brought by the prisoner should go immediately to rebut the charges which have been brought against him. It is at this stage of the proceedings that the counsel of the prisoner may be said to furnish the prosecutor with the grounds of his defence, as he must furnish the Court with a statment of the facts he intends to prove, and of which the Court judges the relevancy. In petty offences the evidence is brought forward at the trial; in serious crimes this evidence is brought forward at the third appearance of the witnesses before the Court, usually termed the confrontation, the prisoner, prosecutor and witness being brought before the Court.

19. The same latitude is allowed the counsel for the defence as is enjoyed by the public prosecutor: and this both may do whenever the witnesses are brought up to make any declarations.

20. In cases of misdemeanor and petty offences, witnesses may give evidence to the moment of trial; but in cases of crime, when the declaration of the witnesses is taken in writing, no evidence can be brought forward after the examination of the witnesses has been closed by the Court, and delivered to the counsel, duly attested by the Greffier.

21. In cases of serious crime the whole is in writing, the original accusation as all other incidental proceedings; in petty offences and misdemeanors the accusation only is in writing; and in Police cases there is no writing at all, but a simple record taken of the accused's name, the nature of his offence, and the punishment to which he has been condemned.

22. It is produced at the trial. And the evidence such as was recorded at the time it was taken in writing must be received by the Court: no proof would be allowed to call in question its veracity or to show that, when produced, it did not faithfully correspond with that which was originally deposed. All parties having it in their power to see that the depositions, when originally made, are correctly set forth by the Greffier and that they faithfully represent the testimony of the witnesses, the party afterwards calling in question its veracity would not be allowed to give evidence to support such pretension.

23. Counsel enjoys the same privilege as the public prosecutor. He may plead both law and fact, and may examine and cross-examine the witnesses as much as he pleases, the patience of the Court being the only limit to the exercise of this faculty.

24. The public prosecutor speaks last in all criminal cases, whether for crimes, misdemeanors, or petty offences.

25. The Bailiff and Jurats are at all times sole judges of both law and fact.

26. By the Bailiff and Jurats: the Bailiff sums up, the Jurats decide by a majority,

and the Bailiff pronounces their sentence or result of their opinions, giving a casting vote where the votes are equal.

27. The Bailiff and a majority of the Jurats may adjourn or suspend at any period or stage of the proceedings and for any cause they may deem reasonable. Adjournments and suspensions are however seldom resorted to; and I am aware but of one case not having been decided the same day it was brought up for trial.

28. The answer to this question will be best given by briefly setting forth the mode of proceeding in criminal cases. In the first place, the prisoner is brought up in the custody of the Constable or his assistant, and the Court, composed of the Bailiff and two Jurats or more, proceeds to inquire into the validity of the charge brought against him. Witnesses are then heard on behalf of the prosecutor in the absence of the accused; and, if from their evidence there appear sufficient grounds to substantiate the charge, he is committed to prison, if the offence be not bailable. If the grounds are insufficient, he is immediately released, and sometimes put upon oath to be forthcoming at any time to answer the charge. On the committal, the charge is reduced to writing and the prisoner called upon for his interrogatory, which he may or may not give as he pleases. If he does answer, it is set down in writing by the Greffier in presence of the Bailiff and Jurats and made use of at the trial, as any other document or evidence which may be brought forth. After this interrogatory the charge is made out in a definitive shape, and in the meantime the prisoner sent to custody, when, after a week or a fortnight, he is served with a summons containing the definite charge upon which he has been interrogated and committed. In this state of the proceedings the Court or public prosecutor may vary or alter the charge, as the parties are not yet understood to have joined issue. Upon this summons the prisoner is called upon to meet the charge or to plead to the merits of the case, when the Court issues, on the demand of the public prosecutor, the following interlocutory decision: "The Crown will prove the accusation against the prisoner," and calling upon the Court to allow the production of evidence to substantiate the same. This is ordered after a record of Guilty or Not guilty, as the prisoner may have pleaded, and that he has chosen Mr. Such-a-one as his counsel. The evidence being ordered and the counsel chosen, the charge cannot be any further altered or varied, but must be gone on with or abandoned. If abandoned, it is very questionable whether the Crown, in this state of the proceedings, could bring forth the same charge in any other shape. I should deem not. The prisoner is then remanded, in the custody of the Sheriff: and on the next Court day, or as soon after as circumstances will allow, the prisoner is served with another summons in which are detailed the charge, its peculiarities, a notice that evidence has been ordered to try its validity, the day when, and place where the trial will occur; and with this notice he comes prepared with evidence to rebut the same. The summonses to all the witnesses must be signed by the Crown officers, who thus become pretty well acquainted with the prisoner's grounds of defence. At the trial, the witnesses are sworn in the language they understand best, by the Bailiff, to tell the truth touching the matter in question. It is not necessary here to give forms either of the oath, or any other, whether of committal, indictment or judgment of prisoners, authenticated forms of which proceedings and all others will be furnished by the Greffier. Witnesses may be challenged at the trial if their evidence is given vivâ voce; at the time of their deposition if taken in writing. The challenge does not, however, prevent the taking of the deposition. The Court summarily disposes of these questions; but in either case the full Court, that is to say, composed of the President and at least seven Jurats, is alone competent. The depositions once taken and authenticated by the Registrar, they are read at the trial as the sole evidence that can be heard. Those for the prosecution are read over by the Crown officers, and those of the defence by the prisoner's counsel, who immediately afterwards proceeds with his defence. If there are any documents as evidence to be read, or instruments by which the crime has been committed to be adduced as evidence, they are brought into Court as "pièces de conviction" at the time of the trial. The counsel in defence, speaking always before the Crown officers, may plead in abatement or irregularity of the proceedings before the evidence is read. The Crown officers rejoin; and, if the pleas are rejected, the trial proceeds upon the evidence, the counsel speaking first and the Queen's Procureur and Comptroller afterwards. In their respective pleadings both counsel and Crown officers bring forward matters of law, fact, evidence and punishment, and each individual member of the Court pronounces in the same manner upon the merits of the defence and prosecution thus presented to them, The Bailiff commences by summing up the whole, and generally, though not necessarily, abstains from pronouncing any opinion upon the merits; the Jurats, according to seniority, delivering their judgments and opinions upon the charge and amount of punishment. The Bailiff takes the sense or result of their opinions, proclaims it in open Court, and the Greffier records it, as he does all other judicial decisions on the public registries. The trial is always in open Court, which is not the case with the preliminary proceedings. I think that in cases of rape, and others affecting public morality, it should be discretionary with the Court to hear the evidence in private and give their opinions and decisions in open Court.

29. The Bailiff and Jurats decide without appeal: their sentence can by no possible incidents be impeded in its execution. If the convict be condemned to banishment, he is put on board of the first ship that departs from the Island to the place he selects; if to flogging, the punishment is inflicted the same hour the decision is pronounced in presence of the Crown officers, Greffier and Sheriff; if he be condemned to death, he is hung on the Friday following the Saturday of his condemnation, in presence of the same officers

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before alluded to. I should suggest that a more appropriate place than the public market be found for the flogging of criminals.

30. Steps are immediately taken by the Sheriff; and execution soon follows all decisions for crimes, misdemeanors and minor offences.

31. As authentic forms of the proceedings will be furnished by the Court, it is unnecessary here to furnish them.

32. The Bailiff, Crown officers, Greffier, and Serjeant are appointed by the Crown, and discharge their functions durante bene placito; but experience shows that they hold their commission quamdiu se bene gesserint. The Jurats and Sheriff or Prevôt are appointed by the States of Election, composed of the Bailiff, the Jurats, the Clergy, the Queen's Procureur, the Constables and Douzeniers of all the parishes, in number two hundred and twenty two. These parochial officers are themselves elected by the rate-payers. The Constables and Douzeniers are elected at parish meetings; the Constables for three years; the Douzeniers for life. It may, however, be stated that the Constables generally serve but one year, though there are some instances of their having served nine.

33. I think that the questions and answers to the preceding statements disclose as much as may be deemed necessary for the purposes of the Commission.

34. I should propose that the confiscation to the Crown, or Lord of the Manor, of the convict's property, which now takes place when condemned to a penalty exceeding seven years' banishment from the Bailiwick, be abolished as inconsistent with the legitimate ends of punishment, and that his property go to the nearest of kin. That the prisoner's counsel be present at all the examination of witnesses in criminal proceedings from the moment he is formally constituted prisoner. That the prisoner's counsel be allowed to speak last in all public prosecutions. That in mixed actions, such as defamation of character, assault and battery, here known as "causes en adjonction," the Crown officers, as public prosecutors or guardians of the public peace, be interdicted to plead for private individuals; but that they watch the proceedings and give their opinions thereon, as independent ministers of justice, to the Bailiff and Jurats who decide. That the punishment of death be abolished as inconsistent with the authority of human tribunals, themselves subject to err, and opposed to the main ends of punishment, the reformation of the offender and the prevention of crime.

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## No 11.

James Gallienne, Esq., Advocate.

*The Answers of James Gallienne, Esq., Advocate of the Royal Court at Guernsey, to the first Series of Questions.*

1. I was admitted to practise as Advocate on the 12th May, 1838, and am still a member of the Bar. I have not, however, practised since the year 1843.

2. The Royal Court is the only tribunal exercising criminal jurisdiction in this Island. It is composed of the Bailiff and twelve Jurats. It is also attended by certain other functionaries or ministerial officers: the Queen's "Procureur" and "Contrôle," the Queen's "Greffier," and the Queen's "Sergent:" their various official duties will be specified below.

The Bailiff (*Ballivus, Bailly*) appears originally to have been an officer exercising both military and civil power. It is likely that a Bailiff was first appointed to Guernsey when the Dukedom of Normandy (to which Guernsey was annexed) was divided into Bailiwicks ("Bailliages") by Rollo. There being then no criminal jurisdiction in the Island, criminals could only be tried at the General Assizes, held by the Bailiff and two Knights ("Chevaliers") residing in the Island together with two other Knights annually deputed to attend. As far as can be ascertained, the civil and military power appears to have been separated in the reign of King Edward I., the Civil officer retaining the name of Bailiff, and the Military officer being styled "Custos," "Capitaneus," now Governor.

The origin of the term *Jurat* is found in the "Constitution of King John." By this document (supposed to have been written after the expulsion of John from Continental Normandy by Philip Augustus, A.D. 1204), twelve Jurats (*Coronatores jurati*) were appointed as Judges collectively with the Bailiff. Notwithstanding the appointment of these twelve Jurats, Justices itinerant still visited the Island; but the power of the Bailiff and Jurats in criminal matters was not thereby curtailed. These visits seem to have ceased in the reign of King Edward III. ("Iceux douze jurés . . . . sont mis et ordonnés au nom et au lieu de quatre Chevaliers." *Précepte d'Assize.*" 1311.). Commissioners have at various times been appointed by the Crown for the purpose of revising the Laws and redressing grievances.

Of the Constitution of King John, the original is lost. The copy at the Record Office ("Greffe") is not dated. The power and attributes of the Bailiff and Jurats have, however, been confirmed by the Sovereigns of England at various times. They were confirmed by an Inquest made in the reign of King Henry III. (1249): by another Inquest made in the reign of King Edward III. (1331) called the Précepte d'Assize: by a charter granted in the 20th year of the reign of King Charles II.: by another Charter granted in the 2nd year of the reign of Queen Elizabeth, &c.

The judicial power given to the Bailiff and Jurats is almost unlimited. The 5th article of the Constitutions recites that they have a right of judging of all cases whatsoever arising in the island, "exceptis casibus nimis arduis, et si quis legitimè convictus

fuerit à fidelitate Domini Regis, tanquam proditor, recessisse, vel manus injecisse in ministros Domini Regis modo debito officium exercendo."

The "Précepte d'Assize" directs that the Jurats have "la connaissance, jurisdiction, précognition et jugement, en la compagnie du dit Baillif, de toutes matières de causes civiles et criminelles échéantes en la dite Ile toutes fois et quantes." By the same authority three cases are excepted out of this jurisdiction: treason, coining, and laying hands on the Bailiff or Jurats when in the discharge of their functions. The Royal Court is, however, authorized to bring the offenders to trial, the punishment only being reserved to the Crown.

3. The only recognised legal authority is the 12th Book of the "Ancien Coûtumier de Normandie" with the Commentary by Terrien. In the reign of Queen Elizabeth, Commissioners were appointed to examine into the laws of the Island; and a document, called "L'Approbation des Loix," was drawn up, purporting to be a revisal of the laws and customs actually in force at the time. Some chapters were "approved," others were declared to be "nihil," and others (where changes had been introduced, and the existing customs were contrary to the written law) were modified. The 12th Book, "Des Crimes et procès Criminels," was revised by the Commissioners; and their remarks thereon form part of the "Approbation des Loix," which was confirmed by Council on the 27th October, 1583.

The work of Terrien and the "Approbation" can, however, scarcely be called an "authority;" the public prosecutor being necessarily obliged to have recourse to the ancient and modern French authorities, as well as to the modern English criminal law. It is nevertheless certain that, although the law contained in Terrien may be applicable to the offence, it is not always adhered to. The Crown officers appear to have a discretionary power in such cases.

Punishments are arbitrary in all cases, except those which are laid down by statute law. So says Terrien; and such is the actual practice of the Court. This disposition is however annulled by the "Approbation." That is but one proof, out of many, of the negligent manner in which this document was drawn up.

4. Information being given to a constable, he, either on his own responsibility or after consulting the Crown officers, lodges the suspected person in jail. Should he not have consulted the Crown Officers, primâ facie, he is considered bound to report the charge to the Bailiff and Crown Officers within twentyfour hours. The accused is brought before the Police Court (*vide* Answer 5), which holds its sittings every Thursday or more often if required.

Should the suspected party evade the Police, a writ called "Prise de Corps" is issued against him by the Crown officers. This writ contains a description of his person, and a prohibition to all persons to give him an asylum or furnish him with the means of escape from the Island. Copies of the writ are affixed in the hall of the Court-house, at the doors of the different parochial churches, in the market place, and published "au cri du marché."

5. Here a distinction is to be made as to the offence. Should the party in charge be merely accused of a minor offence, breach of the peace, in fact, an offence not amounting to a crime, he is brought before the Police Court, composed of the Bailiff or Lieutenant Bailiff and two Jurats (at least two being a quorum of the "Cour du quartier," or "Cour ordinaire"). The charge is not put into writing. The police officers having ordered the witnesses in support of the accusation to attend, they are heard upon oath vivâ voce. Witnesses for the accused are also obliged to appear on a verbal order from the constable. The accused has the right of employing counsel. On a police case, the Court cannot condemn to more than one month's imprisonment. Pursuant to an order in Council, dated 19th June, 1844, prosecutions for the enfringement of Ordinances of the Court are instituted before the Police Court in and out of term, provided the maximum of the fine does not exceed thirty livres tournois (2*l.* 2*s.* 10½*d.* sterling). Previous to this Order, all prosecutions of this nature were entered before the Criminal Court. (*Vide* Answer 16.)

When the accused is condemned, an Act is drawn up stating the charge and the verdict. This Act is registered at the Record Office ("Greffe") in the "Livre en Crime." Should the party charged be acquitted, no act is made of the accusation.

6. The witnesses in support of the charge are, as before, ordered to attend the Police Court. They are, however, examined in private. Both Crown officers, as public prosecutors, are present at all these examinations of witnesses, although by the "Approbation des Loix" this right is limited to the "Procureur." Should the Court find the evidence sufficiently conclusive to commit the accused party, he is called into Court and the charge (which has been reduced into writing) is read to him. He then undergoes an examination, private, of course. The first question asked him is, "Guilty," or "Not guilty?" The answers of the accused are taken down by the "Greffier de la Reine" (Queen's Registrar) or his deputy, and are made use of, on the trial, as part of the evidence: not so often in favour of the accused, however, as against him. He is not compelled to answer. He is not allowed counsel at this stage of the proceedings; nor is he made acquainted with the evidence which has been heard against him. The public is then admitted; the accusation is read; the Crown officers are heard; the Jurats give their individual opinions; and the accused is committed for trial: "Afin que les officiers de la Reine informent contre lui." The accused is retaken into custody by the "Prevôt de la Reine" (Queen's Sheriff,) or his deputy; or he is allowed to give bail for his appearanec when summoned for trial.

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Witnesses are not always heard on the accused party's behalf at this stage.

The Court has sometimes been satisfied with the oath ("Caution juratoire") of the party accused, that he will not quit the Island and will appear when called upon so to do. As above stated, bail or imprisonment is the ordinary mode of securing his reappearance.

The accused having been committed for trial, he is subpœned by the Queen's "Sergent" (whose duty it is, amongst others, to serve all official notices and summonses) before a full Court (*vide* Answer 7.). Should the accused not have been liberated upon bail, he is placed at the bar by the Sheriff, in whose custody he remains till his return to prison. The accusation (containing the definite charge upon which the accused has been committed) having been read by the "Greffier," he is again asked by the Crown officers, "Guilty or Not Guilty?" He then chooses his Advocate, and the following rule is granted: "les officers de la Reine prouveront, après que le dit (prisoner) a fait niance d'avoir commis le dit crime, au rest se référe à son interrogatoire, et a fait choix de l'Avocat... pour son conseil." That is, when the accused pleads "Not guilty." Should he plead "Guilty," the rule taken is: "remise à ... pour entendre les témoins des officiers de la Reine, après que le dit ... a reconnu avoir commis le dit crime, et a fait choix de l'Avocat ... pour son conseil." These Acts of Court are all registered on the "Livre en Crime." The accused (when not bailed) is then reconducted to prison by the Sheriff.

On the day appointed for trial, the prisoner and his witnesses and those of the prosecution having been subpœned by the "Sergent," evidence is heard, the accusation being read by the "Greffier." The accused has however a right of challenging witnesses. These challenges are summarily disposed of by the Court. Should the counsel for the accused wish to plead any irregularity in the proceedings, the form of the indictment &c., he does so before the hearing of the witnesses. Both the prosecutor and counsel for the accused have the right of cross-questioning. When a question is not considered relevant, it is submitted to the Court. After the witnesses have deposed and the documentary evidence, if any, has been read, the counsel for the accused is heard. The Crown officers then give their "conclusions" as to the guilt and punishment. The Bailiff sums up; and the Jurats deliver their opinions, according to seniority. In all cases of an equal division, the Bailiff gives the casting vote. The Jurats give their opinions both as to the guilt of the accused and the amount of punishment at the same time. The Bailiff pronounces the sentence, which is recorded by the "Greffier" together with the indictment on the "Livre en Crime."

When evidence is heard vivâ voce, the indictment is said to be "au criminel."

7. The Royal Court, composed of the Bailiff or Lieutenant Bailiff and seven Jurats (at least seven being a quorum of the "Cour en corps"). The functionaries who send the accused to trial may, and invariably do, act as members of the Criminel Court. The indictments before this Court are "au Criminel" (*vide* Answer 6), or "au grand Criminel" (Answer 16).

8. By the Crown officers (commonly called "les officiers de la Reine"). When once a party has been sent to trial, there is but one case in which the proceedings can legally be abandoned: that is, in the event of an accomplice's evidence becoming requisite. The party whose evidence is required is, however, put upon his trial pro formâ, and a verdict of acquittal is returned "faute de preuve," the Crown officers calling no witnesses against him. An acquittal is the only method that can be adopted of formally abandoning proceedings. In this case, the same charge could not be again brought forward although in a different form.

It has often happened that the Court, after hearing witnesses in private, has not deemed the offence of sufficient gravity to proceed "au criminel;" it has then exercised a summary jurisdiction. (*Vide* Answer 5.)

An accused party has sometimes been set at liberty immediately after hearing the witnesses in private; but, there being in this case no formal abandonment of the charge, the party might again be brought up, should further grounds of suspicion come to light. He is sometimes put upon oath to be forthcoming to answer the charge at any future period. Parties are sometimes liberated by the Police officer who has put them into custody, either on his own responsibility or after consulting the Crown officers, and no charge is preferred.

9. For the stage at which the charge is put into writing, *vide* Answer 6. I conceive that the Crown officers have no right to vary the form or substance of the charge after the accused party has been committed for trial, or, at all events, after the accused has chosen his advocate and the witnesses have been ordered. In either case, the accused would undergo a second private examination or "interrogatoire." Should the Crown officers think proper to abandon the proceedings, after the "interrogatoire" has been taken or the witnesses ordered, the same charge could not again be preferred in any form whatever. I have never known or heard of a case in point. There is a text in Terrien, by which the prosecutor is declared to have the right of adding to, but not of abandoning, any part of the charge. No stated stage of the proceedings is mentioned at which the charge may, or may not, be amplified.

As before stated, the accused party has no right of counsel but after his actual committal for trial. It is true he is allowed to make such defence as he may think proper at his private examination, and that is inserted in his "interrogatoire;" but this mode of proceeding is, unfortunately, more calculated to convict the guilty than to save the innocent.

10. He pleads "Not guilty." But, should the committing magistrates consider the facts alleged against him relevant, he is sent to trial. On the trial, the Crown officers are bound to prove the charge, and counsel is heard on the relevancy of the facts.

11. He pleads "Not guilty;" and on the trial witnesses are heard to substantiate the charge. Counsel's defence embraces every exception, both of law and fact, which may bear upon the case.

12. He is not. Having pleaded "Not guilty" in general terms, witnesses are called upon the trial in support of the charge; and counsel is heard, both on the facts alleged and their relevancy.

13. He is not. He pleads "Not guilty;" and on the trial counsel has the same ground of defence as above.

14. The party charged is entitled to the assistance of counsel. One only is allowed to plead; but a second counsel may be selected as adviser. The party charged chooses both counsel and adviser. When the party charged is unable to defray the expense of legal assistance, counsel is bound to defend him gratis. Should he have the means, counsel is entitled to payment.

15. The accusing and the accused party have an equal right of compelling the production of evidence, but at different stages. The accused can only produce evidence after his committal for trial; whereas the prosecutor not only produces evidence in private before the committing magistrates, but has the right of producing further evidence on the trial "au criminel," and at the second private examination of the witnesses when the indictment is "au grand criminel." (*Vide* Answer 16.)

The Crown officers (having the requisite power over the executive officers of the Court and the Island Police) are bound to employ the same means of compelling the production of evidence on behalf of the accused, as for the prosecution. Witnesses, refusing to appear or refusing to produce the documentary evidence which may be required, are punished by fine or imprisonment.

By an Order in Council, dated 19th June, 1844, the Crown officers, in cases of felony, have the right of detaining an essential witness (about to leave the Island) for three days after the committal of the accused. The latter has the right of cross-examining the witness at the "Confrontation" (*vide* Answer 16). The deposition of a witness about leaving the Island before the trial may be taken in writing, even in ordinary cases. A witness, either for the prosecution or on behalf of the accused, refusing to be sworn or refusing to answer a question which the Court may consider relevant, is liable to imprisonment for contempt of Court.

16. I ought, perhaps, to have before stated that we have, in Guernsey, three distinct indictments in criminal prosecutions. 1. Indictments "au criminel," when the offence charged is not capital. On an indictment of this nature the accused is put upon his trial, as before mentioned. (Answer 6.) 2. Indictments "au grand criminel," when the offence charged is capital, amounting to felony: punishment, loss of life or limb, banishment for life, transportation for seven years or upwards, and civil death entailing confiscation of estate real and personal. On these indictments the whole of the evidence, as it is to be used on the trial, is taken down in writing. The accused having been brought before the "Cour du quartier,' his "interrogatoire" is taken, and he is committed for trial in the ordinary way, the Court having at this stage examined the witnesses vivâ voce. The next step taken is the same as if the offence were not capital; the accused chooses his counsel; and the same rule is granted. The witnesses are again examined in private by the "Cour du quartier:" their depositions are taken down in writing by the Greffier or his deputy. These examinations over, a day is appointed for a re-examination ("Récolement"): each witness has his former deposition read to him; he is sworn a second time, when he either corroborates his former statement, corrects any mis-statement, or deposes further. After the "Récolement," the witnesses attend the "Confrontation." Each witness' deposition being read, the accused, assisted by his counsel (who for the first time hears the evidence), puts such counter-interrogatories as he may consider essential. The accused may challenge any of the witnesses of the prosecution at this stage; but such challenges can only be argued before the full Court on the day of trial. The members of the Court have also the right of questioning the witnesses. The accused may, at this stage, demand that witnesses be heard on his behalf: he is, however, obliged to specify the particular facts he may wish to prove; and the Court judges of the relevancy of these facts. A day is fixed for the hearing of the witnesses; and their evideuce is taken down in writing. After having given in a list of his witnesses at the "Confrontation," the accused is entirely debarred from producing others. He is bound as to time and shackled in his evidence.

The prosecutor and the accused each receive an authenticated copy of all the depositions. The Queen's Greffier or his deputy is the functionary whose duty it is to take down the evidence and to authenticate it. At the trial, the challenges are first disposed of. These having been rejected or considered valid, the evidence or remaining evidence for the prosecution is read by the Queen's "Procureur" or "Contrôle," and that on behalf of the accused by counsel. Whatever documents may be intended as evidence, either as "pièces de conviction" or "pièces de justification," are also read. After which, counsel proceeds with his defence; and the same mode of proceeding is then adopted as on an indictment for an offence not capital. (*Vide* Answer 6.)

3. We have also a third kind of indictment (for libel, slander, minor assault and battery) which is of a mixed character, being partly criminal and partly civil, and is called a "cause en adjonction," one of the Queen's officers being necessarily joined to the prosecutor and the other to the defendant. The proceedings commence by the complainant entering an action for damages, and praying "d'obtenir l'adjonction des Officiers

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de la Reine." The Court finding sufficient grounds for entertaining the action, witnesses are ordered to be heard; and a rule to that effect is granted, with this addition, "adjonction permise." The indictment is afterwards entered in the name of the complainant "et Officiers de la Reine joints." Challenges are allowed, as in other criminal cases, and are summarily disposed of by the Court. After the evidence has been heard, the Crown officers give their "conclusions;" one naturally claiming damages for his client and a fine to the Crown; the other asking for a verdict of "à la folle adjonction et aux frais," and declaring that the Crown is not entitled to damages. The Crown officer acting for the defendant gives his "conclusions" first. In these cases the Crown officers are adjoined as representatives of the Sovereign, on the assumption that the public peace has been broken. How conciliate these opposite proceedings with the dignity and respect due to Her Majesty's officers! It, however, appears that the Crown officers are not compelled to act. In a recent case they refused acting for the complainant. What a denial of justice! There is but one remedy afforded in these cases; and that may be denied at the caprice of a Crown officer.

17. This question is answered above.

18. *Vide* Answers 5, 6, and 16.

19. The accused party has the same latitude allowed him, in questioning and cross-questioning the witnesses, as the prosecutor. The different stages, at which the accused is allowed to avail himself of this right, are pointed out in Answer 5, 6 and 16.

20. On indictment for capital offences, no fresh evidence can be produced for the prosecution after the "confrontations faites et parfaites." The reason is obvious: it is at the "confrontation" that the accused claims his right of calling evidence to rebut the charges alleged against him. But, what an advantage is here given to the prosecutor over the accused! The first is only debarred from producing fresh evidence, when the witnesses have been actually confronted with the accused: whereas the latter has but one opportunity afforded him; he is obliged, at once, to name all his witnesses at the confrontation, and that without having previously had the slightest information given him as to the nature of the evidence to be produced against him.

On indictments "au criminel" no fresh evidence can be received after the witnesses have been sworn on the trial.

21. Evidence is taken down in writing in prosecutions for felony only. (Answer 16.)

The accused party's "interrogatoire" is, however, often produced as evidence by the prosecutor. That is taken down in writing before the Police Court, at the first stage of the proceedings.

22. It is produced at the trial. The Queen's "Greffier" having duly authenticated the evidence, after the "confrontations faites et parfaites," it is not allowable, either against or on behalf of the accused party, to give proof that the written evidence does not correctly represent the whole of what was deposed to.

23. The counsel of the party charged is heard, both on questions of fact and law, immediately after the witnesses have deposed: that is the general rule. (*Vide* Answers 10 to 13, 6 and 16.) He has the usual privileges of counsel in criminal matters, as well in pleading as in questioning and cross-questioning witnesses.

24. The Crown officers have the privilege of being heard last in all police and criminal cases.

25. The Bailiff and Jurats decide both law and fact.

26. The Bailiff, after hearing the "conclusions" of the Crown officers, and summing up, calls upon the Jurats, according to seniority, for their judgment as to the guilt of the accused and the punishment. The sentence is decided by the majority. The Bailiff has only a deliberate voice: but, should there be an equality of division, he gives the casting vote. Sentence is communicated to the prisoner by the Bailiff.

27. The power of the Bailiff and Jurats to adjourn or suspend the proceedings appears to be discretionary. A case has sometimes been adjourned through the absence of witnesses. These are fined seven livres tournois (10*s*.) for non-attendance. (*Vide* Answer 15.) The incarceration of a principal witness, for refusing to be sworn or refusing to answer, might cause the adjournment of the proceedings. Neither the prosecutor nor the accused party has any legal right to claim an adjournment, after the swearing in of the witnesses, in order to produce fresh evidence. The Court, however, having a discretionary power in these cases, unforseen circumstances might sometimes occur to warrant an adjournment.

28. I have endeavoured to detail, as circumstantially as possible, the incidents to accusation and trial, in the foregoing answers.

29. There is no appeal from the sentences of the Police or Criminal Courts. They are, or may be, immediately put into execution. I have already alluded to the only three cases in which the punishment is reserved to the Crown. (Answer 2.)

When sentence of death is pronounced, the condemned is ordered for execution on the Friday following the Saturday on which the trial has taken place. But the sentence might be put into execution forthwith. Should the condemned have petitioned Her Majesty for pardon or commutation of punishment, and Her Majesty's pleasure not have been received within the specified time, the Court, if requested, has invariably granted an additional respite. This is however entirely optional with the Court; the condemned has no legal right to demand a delay.

Her Majesty has the undoubted prerogative of pardon in all cases; but, with the above exception, the execution of a sentence is never deferred. All petitions of this kind are forwarded through the Home Secretary of State.

30. The prisoner is immediately taken into custody by the Queen's Sheriff. If the sentence be imprisonment, the prisoner is delivered up to the Gaoler by the Sheriff. If banishment, he remains in prison till sent off the Island. He has a right of choosing his place of banishment. When a prisoner is sentenced to be transported, a memorial is sent up by the Court to the Home Secretary of State in order to know Her Majesty's pleasure as to the place of transportation. The Sheriff, accompanied by the Gaoler, delivers him up to the English authorities. In the three cases in which the punishment is reserved to the Crown, the prisoner is kept in the Gaoler's custody until the Sovereign's pleasure be known. The extreme penalty of the law is carried into execution in presence of the Crown officers, the Queen's "Prevôt" and the Queen's "Greffier." Flogging takes place in presence of the same functionaries, and, generally, the same day as the sentence is pronounced.

A convicted party is condemned to pay all costs. When unable so to do, they are defrayed by the Crown.

31. The Crown officers and the "Greffier" are the functionaries whose official duties best enable them to give the required information.

32. The Bailiff, since the reign of King Charles II. (order in Council, 27th May, 1674), receives his appointment by patent from the Crown. He is appointed "durante bene placito," and is sworn into office by a Judge delegate and Jurats. The Bailiff appoints a Lieutenant Bailiff; the senior Jurat is generally nominated, and is sworn into office by the Bailiff and Jurats.

The Jurats and "Prevôt" (although called "le Prevôt de la Reine") are chosen by the Elective States of the Island, composed of the Bailiff and Jurats, the Queen's "Procureur," the Rectors of the different parishes, and the "Douzeniers" or members of the Parochial and Cantonal corporations. The service of the Jurats is compulsory. They are sworn into office by the Bailiff and Jurats, and are removable by the Crown alone, either by their elevation to the rank of Bailiff, or by their being deposed for malversation. Should a Jurat wish to resign, he is obliged to memorialize Her Majesty to that effect, after first obtaining the consent of the Royal Court.

The "Procureur" (whose office corresponds to that of Attorney General), the Contrôle (Solicitor General) and the "Greffier" are nominated by the Crown. The "Sergent" is appointed by the Governor. All these functionaries are sworn into office by the Royal Court.

Nothwithstanding the right claimed by the Governor of nominating the "Sergent," it is evident by the "Précepte d'assize" that this appointment belongs to the Crown. By the same authority, the nomination of the Bailiff, "Procureur," and "Greffier" is reserved to the Sovereign; that right appears, however, to have been usurped by the Governor up to the year 1674, when it was claimed back by the Crown. The date at which the office of "Contrôle" was established is unknown; it must have been since the "Précepte d'assize," as no mention of that officer is therein made.

The "Prevôt," "Greffier" and "Sergent" have deputies chosen by themselves, and sworn into office by the Royal Court. They are removable at pleasure.

When the "Procureur" and "Contrôle" are absent from the Island, the advocates, according to seniority, are sworn in as Crown officers delegate.

33. I have, to the best of my ability, given such information respecting the criminal law of Guernsey as has appeared to me important for the purpose of the Commission.

34. Before entering into the detail of what appear to me to be defects in the present system, I cannot refrain from candidly stating that I consider them, for the most part, to be purely theoretical. In practice, the causes of complaint are few. The members of the Royal Court may be considered as upright conscientious jurymen deciding on the guilt or innocence of the accused, according to the abstract merits of the case, and as lenient, merciful judges awarding such punishment as they conceive the gravity of the offence really to deserve. I can safely aver that, when the Royal Court does err in its judgment, in nine cases out of ten it is on the side of mercy. But however good the system may appear in practice, that is not sufficient: the theory is bad. No discretionary power, at least of any magnitude, should be allowed to those entrusted with the administration of Criminal Law. The admission of a contrary principle would be conferring a right to the judge which belongs to the legislature alone.

The first defect I will mention, and that is a radical one, is that the accused does not enjoy those privileges which are the natural consequences of the axiom that a person is always to be considered innocent till actually proved guilty. Private examinations and interrogatories are made use of against him. In default of positive evidence, he may be condemned by his own "interrogatoire." He has not the opportunity given him of calling witnesses before his committal. The same judges who commit him sit upon his trial. The Bailiff and Jurats act as Coroners on an inquest: they sit as judges on the trial of a person against whom they have brought in a verdict of "Wilful murder" on the inquest. The accused not knowing the names of the witnesses in support of the charge before his committal, he has no means of producing evidence which might destroy the credibility of these witnesses. He can issue no summons to a witness without its being first signed by the Crown officers, who, by this means, are most likely put in possession of his intended grounds of defence. The prosecutor has a still more decided advantage over the accused when the evidence is taken in writing, the latter being obliged to particularize the evidence he intends producing for his defence, and the Police Court having the power of judging on the relevancy of such evidence. Moreover, he has not a sufficient time

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allowed him to prepare his cross-questioning, or to decide upon the evidence best calculated for his defence. Counsel is bound to plead before the public prosecutor, and, on that account, frequently obliged to anticipate objections which might not perhaps be raised.

There is no fixed classification of offences, either as to their gravity or punishment. An offence of the same nature is sometimes indicted criminally, sometimes made a police case. Some cases have been tried before the Criminal Court of a far more trivial nature than others tried before the Police Court. The Crown officers, it would seem, exercise their own individual judgment in the classification of offences according to the light in which they may view the offence or the accused. Cases have been tried criminally, which partook more of the nature of a civil action for damages than of a criminal accusation. On this point, no decided rule is followed.

There is a great irregularity in the recording of sentences. When a person is indicted on several counts, the opinions of the Jurats are invariably delivered on each count separately, but no record is made of this fact; the verdict, on the contrary, is recorded "Guilty," without specifying on what counts the prisoner may have been convicted and on what others he may have been found "Not guilty." Thus, on an indictment for murder, the sentence is recorded "Guilty," although the accused may have been convicted on some minor count only and acquitted on the principal count. I know of but one solitary instance in which a sentence was recorded "Not guilty" on some counts, and "Guilty" on others. This took place Saturday, the 18th instant.

Another anomaly is allowing a Crown officer to plead for the defendant in cases of "adjonction." The prosecuting Crown officer, besides asking for damages on behalf of his client, concludes to a fine to the Crown; the other, as a matter of course, argues for an acquittal, and declares that the peace has not been broken, and that, consequently, the Crown does not demand a fine. The fine awarded is but nominal, certainly; that, however, does not affect the right or wrong of the question. It is evident, that both Crown officers swear to maintain and defend (not plead against) the rights of the Crown. The same practice, as above, is followed when a party is prosecuted for a fine for the infringement of an ordinance of the Royal Court. A part of the fine is always applicable to the Crown. I have already shewn (Answer 5) that this evil is partially remedied by an Order in Council of the 19th June, 1844, by which order fines for infringements of Ordinances, not exceeding thirty livres tournois, are sued for before the Police Court; the defendant is then assisted by counsel only. In these last cases, the Court, which made the Ordinance, tries the accused and applies the punishment.

However numerous the counts of an indictment may be, the prosecutor can only call twelve witnesses in support of the charge. The number of the accused party's witnesses, is also limited to twelve.

Although the Police Court has no power of imprisoning a person beyond one month, it has the means, indirectly, of banishing a person from the Island for life. The mode adopted is by obliging the party to find bail for his future good conduct or quit the island. This, amongst other discretionary powers, requires a limitation.

Many of the improvements called for are suggested by the defects of the present system above enumerated. A regular classification of offences and their punishment to be made. Confiscation to be abolished. The grand object of penal enactments is the repression of crime. To intimidate, to reform, such are the ends to be aimed at. By rendering punishment inevitable one end will be attained; by proportioning the punishment to the crime, by endeavouring to conciliate mercy with justice, the other end will be attained. It therefore follows that the offender must be punished: society demands it; justice demands it; the ends aimed at by the law demand it. But what are the practical results of confiscation? Is it calculated to reform the criminal? No. Will a man be deterred from the commission of a crime through the dread of his estate being confiscated? No. In fine, is it productive of one beneficial result? No. By this remnant of despotism the innocent are punished, not the guilty. A father's crime benefits a royal treasury; it begars his child. Flogging to be abolished. It is a degrading spectacle, an outrage on public decency, to see a man paraded through the principal street of the town in a state of comparative nudity, exposed in the market place, and a second time taken through the town with his back lacerated by the whip.

Constables' powers to be defined.

The number of witnesses not to be limited, or, at least, twelve to be allowed on each count of an indictment. Prosecutions for libel, minor assault &c. to be entered as civil actions for damages without the intervention of the Crown officers, or, at all events, a distinction to be made according to the nature of the libel or assault. By that I mean, the Crown officers to have the right of themselves making a charge or intervening, should the offence be of an aggravated nature, or the peace have been broken. The "interrogatoire" of an accused not to be used on the trial, or no private examination to take place. A list of the witnesses for the prosecution to be furnished to the accused. Counsel to be present at the examination of witnesses before the committal. Summonses to the witnesses of the accused to be valid without the signature of the Crown officers. The accused not to be bound to specify the facts he may wish to prove when the evidence is taken down in writing; or witnesses, in all criminal cases, to be examined *vivâ voce* on the trial. Depositions in writing are very tedious and not so well calculated for the investigation of truth as the cross-questioning of witnesses at the time of trial. Counsel to be heard last on the trial. A record of guilt or acquittal to be made on the several counts of an indictment. This precaution is most essential, not only in a jurisdiction where punishments are arbi-

trary and precedents cited by the Crown officers in giving their "Conclusions," but even, where such is not the case, it is but just that the accused should be entitled to a recorded sentence of acquittal on a serious count, when only convicted on a minor one.

The power of the Royal Court to be limited. Police, examining and committing Magistrates and Coroners not to form part of the Criminal Court. This improvement might be effected by the creation of an inferior Court, to be composed of a President and not less than four members; the President and two members sitting by rotation to form a quorum. One Crown officer to attend. This Court to judge of infringements of the Ordinances enacted by the Royal Court. Its members to be elected by the States of the Island.

It will be seen, by the above summary, that no subversionary measures are broached. A reform is wanted. And from the few imperfect suggestions made I have no doubt but that some improvements in the present system might be effected. One improvement naturally leads to another.

20*th July*, 1846.

JAMES GALLIENNE,
*Advocate of the Royal Court, Guernsey.*

James Gallienne, Esq., Advocate.

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No. 12.

*The Answers of Stephen Martin, Esq., Her Majesty's Deputy Sheriff at Guernsey, to the First Series of Questions.*

Stephen Martin, Esq., Deputy Sheriff.

1. Upwards of ten years practice as Deputy Sheriff, and a few years previously clerk in the office of the Procureur du Roi.

2. The Royal Court, composed of the Bailiff and twelve Jurats. This body is supposed to have been invested with its present attributes, about the year one thousand two hundred and four, by the constitutions of King John shortly after the cession of Normandy to France: and by a certain inquest made in the reign of Edward the Third, in the year one thousand three hundred and thirty one, called the "Précepte d'Assize," they are said to have "la cognaissance, jurisdiction, précognition et jugement en la compagnie du Baillif de toutes matières de causes civilles et criminelles échéantes en la dite Ile toutes fois et quantes."

3. The Commentaries of Terrien on the Norman Law and the best English and French writers on Criminal Jurisprudence, are usually referred to.

4. When a party is suspected of having committed an offence, he is seized by one of the constables, by whom he is either held to bail or lodged in prison. The Constable then reports the case to the Bailiff and Crown officers, by whose directions the party accused is brought before the Court composed of the Bailiff and at least two Jurats and the Crown officers; which Court sits at least once a week, but oftener if necessary.

5. The Police Court, composed, as above mentioned, of the Bailiff and at least two magistrates, often exercises a summary jurisdiction in cases of minor importance and in which the maximum of punishment awarded is one month's imprisonment, or fifty livres tournois fine.

6. When no summary jurisdiction is exercised, after hearing evidence produced by the Crown officers for the prosecution and by the accused for his defence, if the Court deems the evidence sufficient, at the request of the officers of the Crown he is committed for trial, and his appearance secured by his being either sent to prison or admitted to bail until the trial, acccording to the nature of the offence with which he is charged.

7. Before the full Court, composed of the Bailiff and at least seven magistrates. The magistrates who have sent the party to trial are capable of acting as members of such Court.

8. By the Crown officers. When a person has been committed for trial, the Crown officers may (if they consider they have no sufficient evidence to ensure a conviction) abandon their proceedings: but the accused is entitled, in that case, to a verdict of acquittal, and cannot be proceeded against a second time for the same offence.

9. After the Court has held a secret examination on the subject of the charge, they decide either to acquit the prisoner, or to commit him for trial; in the latter case the accusation is reduced to writing, and the interrogatory of the prisoner is taken, and, in the same manner, reduced to writing. The Crown officers may vary the form or substance of the charge, at any time, previous to the hearing of witnesses; but the alteration must be communicated to the prisoner and a fresh interrogatory taken on the accusation in its altered form. This does not affect the defence, which only commences after the hearing of the evidence for the prosecution and the defence.

10, 11, 12, and 13. In all these cases the form of proceeding is the same, as the defence only commences after the evidence has been heard. But the prisoner's defence includes any objection, whether relating to questions of law or fact.

14. The party charged is entitled to make choice of an advocate, when first called upon to plead to the indictment, out of the members of the bar, who are limited to six. The advocate is bound to undertake the defence, whether the accused can pay or not.

15. The Crown officers summon the witnesses, both for the prosecution and for the defence: and they are bound to attend when required, at all stages of the proceedings, on pain of fine or imprisonment.

16. In the proceeding called "au petit Criminel," that is, in cases not amounting to felonies, the evidence is heard vivâ voce on the day of trial in presence of the prisoner. "Au grand Criminel," or in cases amounting to felonies, which entail the punishment of

GUERNSEY.

*Answers to Questions.*

SERIES I.

Stephen Martin, Esq., Deputy Sheriff.

death or transportation for seven years and upwards, the witnesses are first heard in private before the Court and their evidence reduced to writing, the prisoner or his counsel not being present; on a subsequent day, the witnesses are again brought forward and confronted with the prisoner, when he or his counsel can cross-examine them on their evidence, the whole of which examinations are in same manner reduced to writing.

17. Answered as above. Question 16.

18. "Au petit Criminel," on the day of trial; "au grand Criminel," after the confrontation of the accused with the witnesses of the Crown.

19. "Au grand Criminel," at the time of the confrontation; and at the day of trial, "au petit Criminel." Every latitude is offered to the prisoner or his counsel to question the witnesses produced against him.

20. After committal for trial, when once the witnesses are sworn, no fresh evidence can be produced against the party accused.

21. "Au grand Criminel," all the evidence is taken down in writing previous to the trial. "Au petit Criminel," the evidence is taken for and against the prisoner, vivâ voce, on the day of trial.

22. "Au grand Criminel," the evidence taken down in writing, both for and against the prisoner, is read over on the day of trial; and it is not allowable, either for or against the prisoner, to offer proof that the evidence does not correctly represent the whole of what was deposed to. There is no distinction made between the evidence taken at the different stages of the proceedings.

23. The counsel of the prisoner has every latitude to plead on all questions of law or fact that may arise, and to examine and cross-examine the witnesses on the trial.

24. The party accused speaks last, the prisoner's counsel being obliged to anticipate the arguments that may be made use of by the Crown officers from the evidence adduced.

25. The Royal Court, composed as before stated, decide all questions of law and of fact.

26. By the majority of the Jurats; the Bailiff has the casting vote when the opinions are equally divided.

27. The Court has the power to adjourn its proceedings, when the case cannot be finished in one day; but such cases occur very seldom, the Court sometimes sitting until ten or eleven o'clock at night to finish a case.

28. Answered on the previous questions.

29. There is no appeal allowed in criminal cases; the only relief is by an act of grace from the Crown: the Court has no power to alter or mitigate its sentences.

30. If imprisonment is awarded, the execution of the sentence takes place as soon as judgment is awarded; if banishment out of the Island simply, the prisoner is sent away by the first vessel; if the sentence is transportation to the penal colonies, the prisoner is sent back to gaol to await the pleasure of Her Majesty; if the sentence be death, the execution is appointed to take place, generally, in a week from the passing of the sentence; but an application for delay to give time for an application to the mercy of the Crown, is never refused. The Sheriff, as executive officer, is obliged to see the sentences of the Court carried into effect.

31. Answered by the previous questions. The witnesses are sworn to "declare the truth, the whole truth and nothing but the truth touching the matter in question." There is a special oath taken by the Bailiff, Jurats, Officers of the Crown and Advocates, respectively, on being admitted to office, which would occupy too much space if recited at length in this place.

32. The Bailiff is appointed by the Crown. The Jurats are chosen for life by the States of Election of the Island: these functionaries, when once appointed, can only be removed by the Crown, and are compelled to serve until, by application to the Crown, they are allowed to resign their office.

33 and 34. I am not competent to enter at length into the answers to these questions, but will merely state the improvements which, I consider, would be advantageously effected in our mode of proceeding.

The Court should not be empowered to hold Coroner's inquests. The committing magistrate should not sit afterwards on the trial. The accused should have the privilege of being heard last on his trial. No secret examination of a prisoner should take place, unless in the presence of his counsel. The law by which the property of a prisoner convicted of a felony is confiscated to the Crown should be abrogated. That a bare majority of the Jurats should not be sufficient to condemn a prisoner, but at least two thirds of their number. That the witnesses in criminal prosecutions should not be limited to twelve in number. That cases for defamation, &c., &c., called "causes en adjonction," be made civil actions, the Crown officers being allowed in each case merely to watch and protect the interests of the Crown. And, finally, that some means should be devised to enable the Court to inflict punishment more in accordance with the nature of the crime, which, amongst other things, the want of a house of correction precludes their doing at the present time.

STEPHEN MARTIN, *Her Majesty's Deputy Sheriff.*

*Guernsey, 17th July*, 1846.

No. 13.

GUERNSEY.

*Answers to Questions.*

SERIES I.

Jean Naftel, Esq., Deputy Greffier.

*The Answers of Jean Naftel, Esq., Her Majesty's Deputy Greffier at Guernsey, to the first series of Questions.*

1. From my attending Court officially, as Deputy Greffier, since January, 1837.

2. The Royal Court, composed of the Bailiff and twelve Jurats. Their jurisdiction has most probably originated in the Constitutions of King John, and extends to any offence, with the exception of false coining, treason, or assaulting the Bailiff or Jurats when discharging the duties of their office, of which the Court take cognizance and sentence is reserved to the Crown.

3. The ancient Norman law of Terrien: but the modern, as well as ancient, English and French Criminal law are quoted.

4. A Constable takes him in custody, then apprizes the Crown Lawyers and the Bailiff, and receives his instructions of the Crown Lawyers.

5. In minor offences, before the Court called "Cour Ordinaire," assembled "en Police Correctionnelle," composed of the Bailiff and at least two Jurats; the utmost punishment that can then be inflicted being one month's imprisonment.

6. He is questioned before the Court, composed of the "Cour Ordinaire," in private, when his answers are reduced in writing, which is called taking his "Interrogatoire." His appearance before the Court is secured by his being committed to prison or his being obliged to give bail for his appearance.

7. Before the Royal Court, constituted as aforesaid. The functionaries who have sent the party to trial are capable of acting as members of the Court.

8. The proceedings are instituted against the accused party by the Crown Lawyers; that being done, the proceedings are not abandoned, unless it be in cases where, among several having been committed for further information, one has been admitted (in default of sufficient legal proof without) to be a Crown witness against the rest.

9. After a private enquiry is made by the examination of the witnesses, the charge is put in writing; after which the accused's "Interrogatoire" is taken. The form or substance of the charge may be varied by the Crown Lawyers, the accusing parties; after which (if it be done) the prisoner must submit to another "Interrogatoire." The defence of the party accused commences when the witnesses are heard in support of the charge.

10. Whether the party accused admits the facts alleged against him or not, the proceeding is the same.

11. It is also the same.

12. He is not.

13. He is not.

14. He is entitled to an Advocate, of which he makes choice. The Advocate is bound to defend him whether he is able to defray the expenses or not.

15. Witnesses for either are obliged to attend at any stage of the proceedings, under pain of fine or imprisonment.

16. In cases "au petit criminel," viz., cases not amounting to felony (cases amounting to felony being "au grand criminel"), after being committed for trial, the accused receives a summons from the Crown Lawyers, containing the indictment made out against him, to appear at Court to make choice of an Advocate. Previous to the trial, he is again served with another summons to appear; the Crown Lawyers likewise cause the witnesses to be summoned, both in support of the charge as well as in the defence of the accused. On the day of trial, the indictment is read and the witnesses sworn; after which the accused's "Interrogatoire" is read and the witnesses heard, the counsel of the accused being allowed full liberty to cross-question the witnesses of the Crown.

17. 18. At the trial, as above stated.

19. He is allowed full liberty to do so, as above mentioned.

20. Not in cases "au petit criminel;" when the witnesses are heard *vivâ voce* at the trial.

21. If it be a case of felony, "au grand criminel," the depositions of the witnesses of the Crown are taken in writing in private before the "Cour ordinaire." When this is done, a day is fixed for the "Récolement" and "Confrontation;" at the "Récolement" each witness hears his deposition read to him, and is asked if he confirms it; and at the "Confrontation," which takes place immediately after, the deposition of each witness is again read in the presence of the accused and his counsel, who has a right to cross-question each witness, and which questions and answers are also taken in writing (the depositions of the witnesses being given to the counsel of the accused the morning of the day the "Récolement" and "Confrontation" takes place). The "Récolement" and "Confrontation" ended, the accused names such witnesses as he may wish to be heard; and the Court then meet to hear their evidence, which is likewise taken in writing.

22. After the whole evidence is completed, a copy is given by the Greffier, duly authenticated by him, both to the accusing party as well as to the accused, which is read at the trial. That evidence is deemed to represent correctly the whole of what was deposed to.

23. He has full liberty to be heard on all questions, either of law or of fact; and in cases "au petit criminel," where the witnesses are heard *vivâ voce*, to examine them.

24. The party accused is bound to speak first.

25. Both the law and the fact is decided by the Bailiff and Jurats.

26. By the majority of the Jurats; the Bailiff has the casting vote.

27. They can do so, when, by reason of cases of very long duration, they cannot be finished in one day.

28. They are as before stated.

GUERNSEY.

*Answers to Questions.*

SERIES I.

Jean Naftel, Esq., Deputy Greffier.

29. There is no appeal allowed, except it be obtaining pardon from the Crown.

30. If it be an imprisonment, the sentence is put into execution at once; if it be banishment, as soon as a vessel be found to take the prisoner on board; if it be transportation, as soon as Her Majesty's pleasure is known as to what place he is to be sent; and, if it be sentence of death, such sentence is generally delayed a reasonable time, not less than from the day of trial (Saturday) to the following Friday.

31. The indictment is drawn out (see Appendix "A.") when choosing his counsel; the indictment is read (see Appendix "B.") when he pleads Guilty or Not guilty; then, at the trial, the indictment is again read, when the witnesses are sworn, the "Interrogatoire" read, the witnesses examined *vivâ voce* (except in cases "au grand criminel," as above mentioned, when the depositions are taken in writing), and the judgment recorded (see Appendix "C."). For the oath taken by the witnesses (see "Appendix D."); for that taken by the Bailiff (see Appendix "E."); for that taken by the Jurats (see Appendix "F."); for that taken by the Procureur and Comptroller (see Appendix "G."). The other officers of the Court are respectively sworn to perform faithfully the duties of their office.

32. The Bailiff is appointed by the Crown: the twelve Jurats are elected by the members of the States of Election, in all, 222. They are named for life, and cannot resign without the sanction of the Crown, obtained by an Order of Her Majesty in Council.

33. 34. I am not aware, at present, that I could, by way of suggestion, add anything more than I have done in answering the questions contained in the first Series.

*Guernsey, July* 18, 1846.

JOHN NAFTEL,
*H.M. Deputy Greffier.*

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Appendix A.

## APPENDIX A.

*A la Cour Royale de l'Ile de Guernesey.*

Le Vingt-deux Novembre mil huit-cent trente-huit, devant Daniel de Lisle Brock, Ecuyer, Baillif, présens Jean Guille et Jean Hubert Ecuyers, Jurés.

Pierre Brehaut, fils de Jean, de la paroisse de Saint Martin, ayant été ce jour produit devant la Cour par le ministère de Mr. Pierre Le Page, Junieur, un des Connétables de la dite paroisse, étant accusé d'avoir, soit seul ou avec autre son complice ou autres ses complices, dans la nuit du 16 au 17 Novembre, 1838, ou environ, pris, volé et emporté hors d'un courtil, situé aux Caches en la dite paroisse, occupé par le Sieur Jean de Mouilpied, une quantité de pommes de terre appartenant au dit Jean de Mouilpied, lesquelles étoient défouies et amoncelées en parcelles dans le dit courtil: La Cour, après avoir pris par écrit l'interrogatoire du dit Brehaut et entendu des témoins dignes de foi, a ordonné qu'il sera constitué prisonnier dans la prison publique pour que les Officiers de la Reine informent contre lui.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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Appendix B.

## APPENDIX B.

*A la Cour Royale de l'Ile de Guernesey.*

Le Vingt-quatre Novembre mil huit-cent trente-huit, devant Daniel De Lisle Brock, Ecuyer, Baillif, présens, Jean Guille, Jean Hubert, Jean Le Marchant, Messire William Collings, H. O. Carré, Frederic Mansell, Thomas W. Gosselin, Thomas Le Retilley et Harry Dobrée, Ecuyers, Jurés.

Les Officiers de la Reine prouveront les fins de l'action qu'ils ont contre Pierre Brehaut, fils de Jean, de la paroisse de Saint Martin, prisonnier dans la prison publique, à se voir adjuger à telle peine punition ou châtiment corporel que la Cour trouvera condigne, pour avoir le dit Brehaut, soit seul ou avec autre son complice ou autres ses complices, dans la nuit du 16 au 17 November, 1838, ou environ, pris, volé et emporté hors d'un courtil situé, au Caches en la dite paroisse, occupé par le Sieur Jean de Mouilpied, une quantité de pommes de terre appartenant au dit Jean de Mouilpied, lesquelles étoient défouies et amoncelées en parcelles dans le dit courtil, et ce à l'infraction des loix, trouble de l'ordre public, et leur payer leurs dépens: après que le dit Brehaut à fait niance d'avoir commis le dit crime et a fait choix de l'Avocat Falla pour son conseil.

(Extrait des Regîtres,)

JEAN NAFTEL, *Député Greffier de la Reine.*

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Appendix C.

## APPENDIX C.

*A la Cour Royale de l'Ile de Guernesey.*

Le Huit Décembre mil huit-cent trente-huit, devant Monsieur le Baillif, présens, Jean Guille, Jean Le Mesurier, Jean Hubert, Jean Le Marchant, Ecuyers, Messire William Collings, H. O. Carré, Frederic Mansell, T. W. Gosselin, Thomas De Retilley et Harry Dobrée, Ecuyers, Jurés.

Sur l'action des Officiers de la Reine contre Pierre Brehaut, fils de Jean, de la paroisse de Saint Martin, prisonnier dans la prison publique, à soutenir leur preuve en la cause

qu'ils ont contre lui à se voir adjuger à telle peine punition ou châtiment corporel que la Cour trouvera condigne, pour avoir le dit Brehaut, soit seul ou avec autre son complice ou autres ses complices, dans la nuit du 16 au 17 Novembre, 1838, ou environ, pris, volé, et emporté hors d'un courtil, situé aux Caches en la dite paroisse, occupé par le Sieur Jean de Mouilpied, une quantité de pommes de terre appartenant au dit Jean de Mouilpied, lesquelles étoient défouies et amoncelées en parcelles dans le dit courtil, et ce à l'infraction des loix, trouble de l'ordre public, et leur payer leurs dépens, au fins d'Acte du 24 November, 1838 : Est le dit Brehaut condamné à un mois d'emprisonnement dans la prison publique au secret au pain et à l'eau et aux frais, après avoir entendu les témoins des dits Officiers de la Reine.

(Extrait des Regîtres.)

JEAN NAFTEL, *Député Greffier de la Reine.*

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## APPENDIX D.

Appendix D.
Serment ordinaire dans toutes causes.

*Serment ordinaire dans toutes causes.*

Vous jurez et promettez, sur la foi et le serment, que vous direz la vérité, toute la vérité, et rien que la verité dans cette cause.

Ainsi Dieu vous soit en aide.

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## APPENDIX E.

Appendix E.
Serment du Baillif.

*Serment du Baillif.*

Vous jurez et promettez, sur la foi et le serment que vous devez à Dieu, sur les Saints Evangiles de Jesus Christ, que touchez de votre main dextre, que vous exercerez bien et fidélement la charge de Baillif de cette Ile de Guernsey; que vous maintiendrez l'avancement de la gloire de Dieu, l'honneur de Sa Majesté, notre Souveraine Dame Victoria, par la Grâce de Dieu, Reine du Royaume uni de la Grand Bretagne et d'Irlande, Défenseur de la Foi, et qu'à Sa dite Majesté vous serez vrai et loyal sujet; que vous garderez et maintiendrez bien et loyalement et de tout votre pouvoir toutes les loix, libertés, usages, et anciennes coûtumes de cette Ile en la compagnie des Jurés de cette Ile, et exécuterez et accomplirez les regards, records et jugemens faits et declarés par les dits Jurés, et que, si par erreur ou autrement vous faisiez aucune défaute ou trépas à l'encontre, vous vous redresserez incontinent selon l'avis et bonne opinion des dits Jurés; que vous ne ferez sceller aucunes lettres qui ne soient droites et juridiques; et que, de toutes ventes, obligations, sentences ou termes de rôle qui seront faits par devant vous, vous en baillerez justes relations et records Vouz promettez ainsi.

Ainsi Dieu vous aide.
Dieu sauve la Reine.

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## APPENDIX F.

Appendix F.
Serment des Jurés.

*Serment des Jurés.*

Vous jurez et promettez, sur la foi et le serment que vous devez à Dieu, et sur le peril et damnation de votre ame, et sur les Saints Evangiles de Jesus Christ, que touchez de votre main dextre, que vous exercerez bien et fidélement la charge et office de Juré de la Cour Royale de cette Ile de Guernsey; que vous maintiendrez l'avancement de la gloire de Dieu, l'honneur de Sa Majesté, notre Souveraine, par la Grâce de Dieu, Reine du Royaume uni de la Grande Bretagne et d'Irlande, Défenseur de la Foi, et en ses pays et dominions, tant aux causes ecclésiastiques que temporelles, Suprême Gouverneur; qu'à Sa dite Majesté vous serez vrai et loyal sujet, tant au fait ecclésiastique qu'au temporel, renonçant aux faits et ordonnances du Pape et à toute puissance et jurisdiction foraine; que vous maintiendrez justement la République de cette Ile, et garderez et entretiendrez de tout votre pouvoir les loix, libertés, coûtumes et autres usages de droit accoûtumés en cette Ile; que vous assisterez et aiderez, avec le Baillif ou son Lieutenant, en la compagnie d'autres Jurés vos frères, en cours ordinaires à votre tour, et en cours extraordinaires toutes fois et quantes qu'en heure due en serez requis, à rendre bonne et loyale justice entre Sa dite Majesté et ses sujets et de partie à partie, tant au petit qu' au grand, et principalement aux veuves et orphelins, sans aucun supporter ou favoriser par don, promesse, amour, acception de personne ou autrement; que vous n'assisterez à sceller aucunes lettres qui ne soyent droites et juridiques; et que de toutes ventes, obligations, sentences, ou termes de rôle, qui seront faits par devant vous, vous en baillerez justes relations et records. Et si par aventure vous aviez erré, fût par ignorance ou autrement, vous promettez de vous rectifier et de vous ranger à la plus saine opinion de vos frères. Vous promettez ainsi.

Ainsi Dieu vous aide.
Dieu sauve la Reine.

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GUERNSEY.

*Answers to Questions.*

SERIES I.

Jean Naftel, Esq., Deputy Greffier.

Appendix G. Serment du Procureur et Contrôle.

APPENDIX G.

*Serment du Procureur et Contrôle.*

Vous jurez et promettez, par la foi et serment que vous devez à Dieu, et sur le peril et damnation de votre ame, et par la Sainte Loi et Evangile de Dieu contenues en ce Livre qu'avez touché de votre main dextre, premièrement, que vous maintiendrez l'avancement de la gloire de Dieu, l'honneur de la Majesté de notre Souveraine, Dame Victoria, par la Grâce de Dieu, Reine de la Grand Bretagne et Irlande, Défenseur de la Foi &c., et en ses Pays et Dominions, tant aux causes ecclésiastiques que temporelles, Suprême Gouverneur; qu'à icelle Majesté vous serez vrai et loyal sujet, tant aux faits ecclésiastiques que temporels, renonçant aux ordonnances et faits du Pape et à tout pouvoir et juridiction foraine; que vous serez obéissant à Justice et aux actes et ordonnances d'icelle, et en verrez l'exécution; et que vous maintiendrez justement la République de cette Ile, et garderez et observerez les loix, droits, et anciennes libertez et usages accoûtumez selon droit en cette dite Ile; que vous poursuiverez et défenderez les droits et causes de Sa Majesté, la Reine, de tout votre pouvoir justes et droiturières, tant en meubles qu'en héritages; et, si aucunement il advient qu'il y ait en vous aucune faute en votre charge, soit par ignorance ou autrement, vous promettez d'être redressé par Monsieur le Baillif et la Justice; et généralement vous promettez d'exercer droitement sans fraude ni déception l'office et charge de Procureur et de Contrôle de la dite Majesté en cette Ile, ainsi qu'à telle Office appartient, comme vrai et loyal en la dite charge est de dire et faire.

Dieu sauve la Reine.

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N.B.—The Commissioners also received from Mr. De Havilland separate answers by himself to the first and second questions of this Series: but, as they relate wholly to the history of the institution of the Royal Court, it has been thought more convenient to print them after the evidence, together with some other documents connected with the same subject.

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SERIES II.

Peter Stafford Carey, Esq., Bailiff.

## ANSWERS TO THE SECOND SERIES OF QUESTIONS.

### No. 1.

*The Answers of Peter Stafford Carey, Esq., Bailiff of the Island of Guernsey, to the Second Series of Questions proposed by the Commissioners.*

1. From the age of puberty a person is considered absolutely responsible to the criminal law. The age of puberty, for this as for other purposes, is fixed at fourteen in males and twelve in females. Before the age of puberty there is no absolute exemption from responsibility: but the cases in which children under that age have been made responsible are very rare.

2. I find that, in the year 1770, a case occurred in which, after a woman was committed to prison on a charge of arson, it appearing to the Court that she was deranged, it was ordered that proceedings should be stayed.

I find that, in 1813, a case occurred in which a man was tried for murder; and, it appearing on the trial that he was insane at the time of the offence, he was acquitted.

I find that, in 1826, under the like circumstances, the prisoner was acquitted and ordered to be detained in prison till further order.

I find that, in 1844, a case occurred in the Cour Ordinaire, sitting as a Court of Police, in which a person was charged with divers acts of violence; and, it appearing to the Court that he was insane, it was ordered that he should be taken back to Jersey, where he had property, and that his return should be notified to the authorities there.

These are all the cases I have been able to find among the records of the Court.

With respect to the test of unsoundness, I have only to observe that no case of the kind has occurred since I have been Bailiff; but I apprehend that the authorities chiefly relied on would be those of the English law.

3. With respect to the cases in which a married woman is considered not to be responsible to the criminal law, I apprehend that the law of Guernsey differs from the law of England in this respect only, that coercion on the part of the husband is not presumed from the mere fact of his being present.

4. With respect to the cases in which a person, otherwise responsible to the criminal law, is relieved from such responsibility by having acted under the control of another, I am informed that the law of Guernsey differs in no respect from the law of England; but I cannot ascertain that any such case has ever been before the Court.

5. When a party is charged with having committed an offence, if it appear on the trial that, though not the actual perpetrator, he was present at the time of the offence assisting the perpetrator, the result is a conviction.

With reference to the questions put respecting a person, who, being charged with having committed an offence, should appear on the trial not to have been the perpetrator, and

not to have been present at the time of the offence, and to have had nothing further to do with it than by assisting the perpetrator, either before or after the perpetration; I must observe that no such case has occurred since I have been Bailiff, nor can I ascertain that any such case has ever occurred: I am, therefore, not in a condition to state as a fact what the result is. Any speculative opinion I may have on the subject will find its place in my answer to the next question.

6. A person who was not the actual perpetrator, but was present at the time of the offence, assisting the actual perpetrator by counsel, watching or otherwise, may be charged with the principal offence; and this is the regular mode of proceeding.

I understand that this mode of proceeding is also applicable to a case not contemplated in Question No. 5; viz., that of a person who, though not the actual perpetrator *and not present*, was, nevertheless, *at the time of the offence*, assisting the actual perpetrator by watching or otherwise.

When a person is charged with having instigated or assisted the perpetrator before the time of the offence, supposing the instigation or assistance to have been of such a nature as to make him what in England would be termed an accessory before the fact, I am informed that the proper way to draw the act of accusation would be to charge him with the principal offence, and then to set forth the acts constituting his *complicité*.

In case he were indicted for the principal offence *simply*, it appears to be considered that no objection could be taken to the act of accusation on the ground of the legal nature of the offence being misdescribed; the ground of objection would be merely that the charge was not set out with the requisite particularity.

Where a person is charged with having assisted the actual perpetrator after the perpetration, supposing the assistance to have been of such a nature as to make him what in England would be termed an accessory after the fact, I apprehend that he is chargeable with such act of assistance as a specific crime, and not as a participator in the perpetration of the principal offence.

And with reference to the inquiry contained in Question No. 5, I apprehend that such a person could not be found guilty of the principal offence.

7. From the answer which I shall have to give to Question No. 10 it will appear that the party participating must be indicted alone.

I am informed that it is not the practice to require that the actual perpetrator should be first convicted.

8. With reference to the inquiry contained in Question No. 7, there is no distinction as to different offences.

9. The theory of constructive presence is unknown in Guernsey.

10. Only one person can be charged in a single prosecution.

11. Different offences may be charged in a single prosecution against the same party. An offence committed by him alone may be charged with an offence committed by him jointly with another.

12. With respect to crimes properly so called, the period of limitation is twenty years. But a penalty cannot be sued for, nor a "cause en adjonction" commenced, after a year and a day.

13. I am not aware that a prosecution can be instituted in Guernsey for any offence committed out of the Bailiwick.

14. For the difference in practice, as far as regards offences committed in Alderney or Sark, I beg to refer to the answer given by the Queen's Procureur.

15. The law of Guernsey may be considered to recognize a classification of offences founded on the different modes of proceeding, which are as follows.l

(1). Summary convictions.

(2). Prosecutions conducted by the Crown Officers.

(3). *Causes en adjonction*, which are partly of a civil nature and partly criminal, hence termed *Causes Mixtes*. A *cause en adjonction* is brought by a party who seeks to recover damages for an assault, for defamation, &c. The Crown in such cases is also entitled to a fine; and the two Crown Officers are necessarily engaged, one on the side of the plaintiff, the other on the side of the defendant.

(4). *Le Bref de Nouvelle Dessaissine*" (now nearly obsolete) is the same proceeding as, in the old law of England, the *Writ of Novel Disseisin*, now abolished. It is in fact a possessory action; but, inasmuch as it complains of something in the nature of a forcible entry, I find that it is commonly classed with criminal proceedings.

(5). *La Clameur de Haro*, originally a sort of *hue and cry*, is still in existence, but is confined in practice to the stopping of injuries done to real property; and, though it belongs to the criminal law in its form, it is in effect a civil remedy.

In speaking of criminal matters in general, I must be understood to refer only to the two first classes above enumerated, viz.: Proceedings by way of summary conviction; Proceedings by way of prosecution, conducted by the Crown Officers. With respect to prosecutions, it is right to observe that there are three different forms of accusation corresponding to three different degrees of punishment. The lowest degree is where the punishment is only by fine or imprisonment. In this case the *acte d'accusation* runs thus: "*à se voir adjuger à telle peine, punition ou amende que la Cour trouvera condigne.*" The second degree is where, besides imprisonment, the Court may inflict corporal punishment, *e. g.* flogging, or the pillory. Banishment for less than seven years is a punishment of the same class. In these cases the *acte d'accusation* runs thus: "*à se voir adjuger à telle peine punition ou châtiment corporel que la Cour trouvera condigne.*" The highest degree is where the Court is authorised to award *capital punishment, i. e.* death, either natural or civil.

GUERNSEY

*Answers to Questions.*

SERIES II.

Peter Stafford Carey, Esq., Bailiff.

Banishment for seven years constitutes civil death. Of late years, in capital cases, the Royal Court has exercised the power of sentencing to transportation, such sentence being carried into effect by means of an application to the Secretary of State. So that in effect capital punishment means death, banishment for at least seven years, or transportation.

In this class of cases the *acte d'accusation* runs thus: "*à se voir adjuger aux peines et punitions imposées par les Loix pour avoir félonieusement*—.

Where the *acte d'accusation* is so drawn as to limit the Court to either of the two lower degrees of punishment, the mode of trial is by what is termed "*le Procès ordinaire.*" The proceeding "*au grand criminel*" is appropriated exclusively to cases where the *acte d'accusation* describes the offence to have been committed "*félonieusement,*" and authorizes the highest degree of punishment. When the trial has not been "au grand criminel," there can be no capital punishment. But it frequently happens that, in cases where the offence is of such a nature as in law to admit of capital punishment, it is quite clear that no such punishment will in fact be awarded; and in such cases it is not unusual for the Court to authorize a trial by the "Procès ordinaire."

PETER STAFFORD CAREY,
*Bailiff of Guernsey.*

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No. 2.

The Jurats of the Royal Court.

August 8th, 1846.

*The Answers of the Jurats of the Royal Court at Guernsey to the Second Series of Questions proposed by the Commissioners.*

1. Before the age of seven no person is responsible to the criminal law; and the general rule is considered to be that he does not become indictable before the age of puberty, which for males is fourteen, and for females twelve years of age. But a few instances have occurred, in which persons of an earlier age, who clearly appeared "doli capaces," have been convicted and punished: and the Police Court has frequently inflicted slight punishments on children found guilty of petty thefts.

2. If at any stage of the proceedings a party charged with an offence is found to have been of unsound mind at the time it was committed, he is discharged from the prosecution, and means are taken for his being kept in safe custody. The test of such unsoundness of mind is that the party was incapable of comprehending the nature of his offence, or of discerning that what he did was wrong.

3. Except in cases of treason and homicide, a married woman is acquitted when she appears to have acted under the coercion of her husband. But the mere fact that her husband was present at the time of the offence is not of itself sufficient to free her from responsibility, without additional evidence, direct or presumptive, that coercion was used.

4. We are not aware of any instance of the kind referred to by this question having occurred here; but we have no doubt that a person would not be held responsible for an offence committed under compulsion, provided the means of compulsion used were such as to induce fear of death, or of some grievous bodily harm.

5. (1.) In the first case supposed by this question, the party would be found guilty of the offence itself. But in awarding the punishment the circumstances of the case would be taken into consideration by the Court.

(2.) In the second case he would be acquitted, that is, if he were charged with the offence simply. In such a case the practice is to charge the party with the principal offence, and further to specify the particular acts anterior to the perpetration by which he instigated or assisted the perpetrator.

(3.) In the third case he would be acquitted. He cannot in such case be charged with the principal offence at all, but only with the specific criminal acts having relation to the principal offence.

6. This question is answered in the replies to that immediately preceding.

7. It is an invariable rule of our procedure to bring a separate indictment against each party accused, even in cases where many have jointly committed the same offence. It is not necessary that the actual perpetrator should have been convicted previously.

8. We are not aware of any distinction in this respect as to different offences.

9. We do not think the question, as proposed, would ever come under discussion, the terms "actual or constructive presence" having no technical meaning in our law. We conceive the question to be considered would be, in the case contemplated in the fourth question, whether the means of compulsion employed were such that the party was unable to withdraw himself from their operation; and in that contemplated in the fifth question, whether the party accused was in any way assisting or encouraging the perpetrator at the time of the offence.

10. No more than one person can be charged in a single prosecution. When an offence may have been committed by more than one person, he is charged with having committed it "soit seul ou avec autre son complice ou avec autres ses complices."

11. Different offences may be charged in a single prosecution against the same party; and an offence committed by him alone may be charged together with one committed by him jointly with another person.

12. Public crimes must be prosecuted within twenty years of their commission; assaults, batteries, and minor offences, within a year and a day.

13. The offence must have been committed within the Bailiwick, which comprehends the islands of Guernsey, Alderney, and Sark.

14. For an answer to this question we beg to refer to that given by Her Majesty's Procureur.

15. There are three classes of indictable offences, distinguished by the difference in the punishment which may be awarded, and by the form in which the action is brought against the accused.

(1.) Cases where the punishment may be death or banishment from the Bailiwick for not less than seven years (such banishment being generally preceded by corporal punishment or imprisonment), the sentence always including forfeiture of property. The form of the action is, "Les Officiers de la Reine actionnent A.B., à se voir adjuger aux peines et punitions imposées par les loix, pour avoir le dit A.B. félonieusement, &c." The proceedings are conducted according to the method called "procès à l'extraordinaire," in which the whole of the evidence is taken down in writing; these are called cases "au grand criminel." The punishments above-mentioned can only be inflicted when the proceedings "à l'extraordinaire" have been observed; and it is further essential that the indictment should state that the act of which the party is accused has been committed "félonieusement;" otherwise, though he may be found guilty, he can only be sentenced to a punishment of inferior degree, and no forfeiture of property can ensue.

(2.) Cases which may be punished with corporal punishment, imprisonment, and banishment for less than seven years. Here the party is actioned "à se voir adjuger à telle peine, punition et châtiment corporel que la Cour trouvera condigne, pour avoir, &c." The word "félonieusement" is not used; and conviction never involves forfeiture of property.

(3.) Cases in which the punishment is restricted to fine or imprisonment only. Here the action is "à se voir adjuger à telle peine punition ou amende que la Cour trouvera condigne."

The cases falling under the two last heads are called "au criminel" simply; and the proceedings used are those termed "procés à l'ordinaire," in which the witnesses are all heard "vivâ voce" before the Court at the trial.

The following actions are also considered as being of the nature of criminal proceedings, and, as such, can only be brought before the "Cour en corps," composed of the Bailiff and seven Jurats.

(1.) "Causes pour amendes," which are actions brought by one or both of the Crown Officers, either alone "ex officio," or jointly with an informer, for penalties imposed by Acts of Parliament in force within the Island, or by local ordinances.

By a recent order in Council, all penalties, not exceeding thirty livres tournois (2*l.* 2*s.* 10*d.*), imposed by local ordinances, may be sued for summarily, before a Court composed of the Bailiff and two Jurats.

(2.) "Causes en adjonction," which are brought by a complaining party, with the view to recover damages in cases of assault, battery or libel. They are so called because, in the first stage of the proceedings, the plaintiff applies to the Court to be allowed "l'adjonction des Officiers de la Reine." This, when granted, has the effect of making the Crown Officers parties to the proceedings; after which it becomes necessary that one of them should act as counsel for the plaintiff, and the other for the defendant, though not to the exclusion of other counsel, if the parties think proper to employ them. Whenever the defendant is amerced in any amount of damages, he is also condemned to pay a fine to the Crown, as being guilty, not only of a private wrong, but also of a breach of the public peace. At present this fine is merely nominal, being almost invariably assessed at three livres tournois (4*s.* 3½*d.*)

(3.) "Causes en Clameur de Haro and en Nouvelle Dessaisine." These originate in certain trespasses or attacks (*attentats*) committed upon realty; but, though still technically considered as criminal actions, their practical effects are now purely of a civil nature.

The actions described under the two last heads are termed "causes mixtes," as partaking of the nature of both civil and criminal proceedings.

JOHN LE MARCHANT,
HILARY OL. CARRÉ,
FREDERICK MANSELL,
J. W. GOSSELIN,
THOS. LE RETILLEY,
HARRY DOBREE,
J. DE HAVILLAND,
T. ANDROS,
EDGAR MACCULLOCH,
W. P. METIVIER,
} *Jurats of the Royal Court of Guernsey.*

*Guernsey, August* 8, 1846.

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No. 3.

*Answers of Charles de Jersey, Esq., Her Majesty's Procurenr at Guernsey, to the Second Series of Questions proposed by the Commissioners.*

Charles de Jersey, Esq., Procureur de la Reine.
August 4th, 1846.

1. I know of no written insular law which fixes the age at which a prisoner becomes responsible to the criminal law; but I apprehend that anciently persons were not con-

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Charles de Jersey, Esq., Procureur de la Reine.

August 4th, 1846.

sidered "doli capaces" until they had attained the age of puberty; possibly in consequence of a law which declares in express terms that minors, under the age of puberty, cannot be witnesses, and which has to this day been strictly adhered to. But, in the year 1819, the question was solemnly argued in the case of a lad only eleven years of age, named McCarthy; when the Court ruled that he could be legally indicted, and he was in consequence convicted and punished. And, in the year 1838, another lad, named Dixon, also under the age of puberty, was indicted, convicted and punished.

2. Should it appear, on the trial, that the party charged was of unsound mind at the time of the offence, that fact is recorded in the judgment. In the only two felonies, both murders, perpetrated during the last forty years by persons of unsound minds, the Court by its judgment directed that they should be confined for life, or until otherwise disposed of by the Court. When the charge against a party proved to have been of unsound mind at the time of perpetration is for a minor offence, the fact is recorded in the judgment, and the perpetrator, if he have the means of maintenance, is placed under the care of his relations, and if he be a pauper he is placed under that of the parochial authorities. Should it be proved, before the trial, that the party was of unsound mind at the time of the offence, an acte is passed ordering all proceedings to cease. I am not aware of any specific "test" for unsoundness of mind. In practice the Court requires full and sufficient evidence to that effect, before it declares a party not responsible to the criminal law.

3. I apprehend that, as a general rule, a married woman is considered not to be responsible to the criminal law when she has acted under the coercion of her husband; but coercion would not be presumed from the mere presence of her husband.

4. A person under the fear of death or other grievous bodily harm would, I apprehend, in some cases, be relieved from responsibility to the criminal law; but not for murder or for other atrocious felonies. I am not aware of any case in point; nor do I believe any has occurred during the last forty years.

5. (1.) A party charged with an offence though not the actual perpetrator, but present at the time of the offence and assisting the actual perpetrator by counsel, watching, or otherwise, is by our law called "Complice," and if charged with the offence would be convicted. The words of the indictment against such a person and those in the indictment against the actual perpetrator would be the same, viz., "pour avoir le dit (name) soit seul, ou avec autre son complice, ou autres, ses complices."

(2.) A party not present, but that instigated or assisted the actual perpetrator *before* the time of perpetration by furnishing him with the ladder, false keys, or other means of committing the offence, knowing they were to be used for that purpose, would, I apprehend (for I do not remember a single analogous case since I am at the bar), be indicted in the same words as the actual perpetrator, "pour avoir soit seul ou avec autre son complice ou autres ses complices;" but the time and the manner in which he had assisted would be added. I do not apprehend that mere counsel unaccompanied by any act would be sufficient to sustain an indictment.

(3.) A party not present, but who, *after* the perpetration, assists the actual perpetrator by counsel or otherwise, if charged with the offence, could not be convicted.

(Firstly.) "If charged with disposing of property stolen by the actual perpetrator." He would be indicted as "réceleur," that is, as receiver of stolen goods knowing them to be stolen.

(Secondly.) "In escaping from justice." He would be indicted for having, on a given day, by a specific act therein set forth, assisted the perpetrator in escaping from justice.

Mere "counsel," unaccompanied by any act, given to a party would not, I apprehend, be sufficient to sustain an indictment.

6. In the first case suggested, the party so instigating and assisting might be charged with the principal offence; in the second, he might be charged with the principal offence adding thereunto the time and manner in which he knowingly assisted the actual perpetrator; in the third, he would be charged with a specific offence.

7. and 8. One person only can be charged in a single prosecution. Anciently, I apprehend the rule to have been, that the actual perpetrator was to be convicted or "décrété de prise de corps" (outlawed), before the "complices" could be tried; but the Court has by degrees departed from this rule; and, at present, I apprehend the "complice" might be charged, though the actual perpetrator should not have been convicted or outlawed previously. There is no distinction in this respect as to the different offences.

9. Our law considers all persons aiding and abetting the actual perpetrator by watching or otherwise at the time the offence is committed as "complices," and, as stated in my answer to the 5th question, they are all indicted in the same form of words.

10. One person only can be charged in a single prosecution.

11. Different offences may be charged in a single prosecution against the same party. An offence committed by him alone may be charged in the same prosecution with one committed by him jointly with another person.

12. The limitations, as to the time reckoned from the commission of a criminal offence, within which a prosecution must be instituted is twenty years; there is no distinction in this respect between different indictable offences.

13. To subject the offender to prosecution in Guernsey the offence must have been committed within the bailiwick.

14. When an indictable offence is committed in Alderney, as the Court of that Island has no criminal jurisdiction, the mode of proceeding is as follows. The party is taken up and brought before the Alderney Court; witnesses are examined and their depositions put into writing; the interrogatory of the party is also taken and put into

writing; and an Acte is then passed by the Alderney Court remitting the case to the Royal Court of Guernsey.

A copy of the Acte and of the evidence, signed by the Greffier, is given to the Prevôt or Sheriff, who takes charge of the prisoner and brings him to Guernsey by the first opportunity. On his arrival at Guernsey, the Prevôt makes his report to the Bailiff and to the Crown Lawyers, on which the Bailiff brings it before the "Cour Ordinaire," when the evidence and the interrogatory taken in Alderney are examined, and, if the offence appear to the Court of a sufficiently serious nature and the evidence sufficiently strong, the witnesses are ordered to attend from Alderney. On their arrival in Guernsey they appear before the ordinary Court and are examined, and the interrogatory of the prisoner is taken: in a word, proceedings are commenced and carried on as if "ab initio," and in precisely the same manner as if the offence had been committed in Guernsey. When an indictable offence is committed at Serk, the prisoner and the witnesses are brought over at once by the Prevôt of Serk, and proceedings similar to those in cases for like offences committed in Guernsey take place.

Charles de Jersey, Esq., Procureur de la Reine.

August 4th, 1846.

15. The law recognises three distinct classes of offences with respect to the punishment to which they subject offenders.

1st. Offences "de quoy l'homme doit et peut perdre vie ou membre." These are described in the indictment as felonies, which runs thus: "à se voir ajuger aux peines et punitions imposées par les loix pour avoir félonieusement," &c. &c. The punishment may be death or banishment for seven years or upwards from this Island (i. e., mort civile): in these the property real and personal of the culprit is forfeited to the Crown or to the Lord of the Manor.

2ndly. Offences which render the perpetrator liable to corporal punishment. These are indicted "à se voir ajuger à telle peine, punition ou châtiment corporel;" the punishment may be flogging, pillory, imprisonment, or banishment from the Island, but for a term not exceeding six years.

3rdly. Offences which are punishable by fine and imprisonment. In these the prisoner is indicted "à se voir adjuger à telle peine, punition, ou amende," and can only be punished by fine or imprisonment.

The proceedings for the first class of offences are indifferently designated, "procès à l'extraordinaire," or "procès au grand criminel," those of the second and third classes merely "procès criminels."

Complaints before the ordinary Court sitting as a Court of Police are usually designated "plaintes en Police Correctionnelle."

Actions for the recovery of penalties for infringement of Acts of Parliament or Ordinances are designated "Actions pour Amendes."

Actions for slander, libel, assault and battery, if entered by the party aggrieved with a view of obtaining damages, are called "Actions en adjonction," or "Actions mixtes."

Actions in the Cry of Haro, "Actions en Clameur de Haro."

Actions in Nouvelle Dessaissine, "Actions en Nouvelle Dessaissine."

CHARLES DE JERSEY,
*Queen's Procureur at Guernsey.*

*Guernsey, 4th August*, 1846.

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No. 4.

*The Answers of John De Havilland Utermarck, Esq., Her Majesty's Contrôle at Guernsey, to the Second Series of Questions.*

John De Havilland Utermarck, Esq., Contrôle de la Reine.

August 8th, 1846.

1. There is no written law stating precisely the age before which a person is not responsible to the criminal law, or drawing any distinction in this respect between different offences. Judging from the precedents I have seen, I apprehend that a child charged with an indictable offence would be tried by the Court and punished, provided they were satisfied that he was "doli capax" at the time of the commission of the offence.

2. If, during the investigation of a criminal charge, it should appear to the Court that there were grounds for supposing that the accused had committed the offence at a time when he was of unsound mind, the criminal proceedings would be stayed, in order to have that particular fact ascertained by evidence: the fact once proved, the accused would be discharged from all criminal responsibility and committed to the custody of his family or of the parochial authorities. In any case, a prisoner's counsel is at liberty to urge unsoundness of mind at the time of the offence as a complete defence to a charge; it then becomes his duty to support this plea by evidence. This being proved on the trial, the prisoner would be detained in prison during Her Majesty's pleasure. There is no specific test as to the degree of unsoundness of mind which would prevent a party from being responsible to the criminal law; but the English authorities and dicta are made use of in such cases as a guide to the Court.

3. There is no written law precisely bearing on this point. In practice the Court follow the English authorities; coercion, however, would not so easily be presumed from the mere presence of the husband.

4. I am not aware of any precedent applicable to this question, or of any law bearing upon it. I apprehend that in such a case the Court would consult and follow the principles of the English law.

5 and 6. According to our forms of proceeding, any number of persons may be indicted separately for the same offence in this form, "pour avoir le dit *A. B.*" (each prisoner on

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John de Havilland Utermarck, Esq., Contrôle de la Reine.

August 8th, 1846.

his indictment) "soit seul ou avec autre son complice, ou autres ses complices—."It is usual in practice to indict all on the general charge, adding the particular circumstances specially affecting each in his indictment only. Supposing a person charged with the substantive offence only, and the evidence to bring him under the first designation, he may be found guilty; under the second and third, he must be acquitted.

The offences of assisting the actual perpetrator in attaining the end aimed at or assisting him in escaping from justice are considered as offences entirely distinct from the actual perpetration of the original crime, and are specially indictable. I do not consider that mere counsel, either before or after the perpetration of an offence, would warrant the framing of an indictment.

7. The former part of this question is answered above; some difference of opinion exists on the latter part. I am of opinion that, to find a receiver of stolen goods guilty, proof of their having been stolen would be sufficient without evidence of the conviction of the thief; and likewise that, to find a person guilty of assisting a criminal in escaping from justice, proof that the criminal was at the time of his escape in charge of an officer of justice, or even that a warrant or "décret de prise de corps" had been issued for his apprehension, would be sufficient. I am not aware of any precedent precisely applicable.

8. There is no distinction in this respect between different offences.

9. As by our law proof of presence at the time of the commission of an offence is not necessary for the conviction of an offender, the doctrine of actual and constructive presence is not recognized.

10. No more than one person can be charged in a single prosecution.

11. Different offences may be charged in a single prosecution against the same party. And an offence committed by a party alone may be laid in the same indictment as that which charges him with an offence committed jointly with another person.

12. No prosecution at the instance of the Law Officers of the Crown can be instituted after the lapse of twenty years from the date of the commission of the offence. Actions "au Petit Criminel" (described below in Answer 15) are prescribed by the lapse of a year and a day from the date of the injury complained of. I will here quote the law from Terrien, p. 502 :—

"Plainte d'excez et mal-façons de corps se doit faire dedans l'an et jour du delict. Mais suite d'homicide et d'autre crime publique, ne se prescrit que par le laps de vingt ans."

13. In the Islands of Guernsey, Alderney, Sark, Herm, or Jethou; these collectively forming the Bailiwick.

14. The Court of Alderney has no criminal jurisdiction strictly speaking (except for the enforcement of its local ordinances), but inquires into all offences committed there, the depositions of the witnesses being taken in writing and the accused interrogated. The accused is then sent to Guernsey in the custody of the Sheriff of Alderney; and the Court of Guernsey, after examining the evidence taken in Alderney, orders the witnesses over to appear before them in Guernsey; and the case is gone into as if it had happened in Guernsey.

The Sénéchal or Magistrate of the Island of Sark has the power to condemn to an imprisonment of twenty-four hours, or to a fine of three Livres Tournois. Any offence requiring severer punishment must be investigated *ab initio* in Guernsey, the witnesses and the accused being brought to the Island by the first opportunity.

The Island of Herm has a constable with authority to apprehend and bring before the Court of Guernsey any person committing an offence at Herm.

The Island of Jethou is inhabited by one family.

15. In practice we recognise the following classification of criminal proceedings.

Cases described in the indictment as felonious are prosecuted "au Grand Criminel," and the offender is sued "à se voir adjuger aux peines et punitions imposées par les loix." Persons convicted under this proceeding are subject to death, transportation, or banishment from the bailiwick for a term of or exceeding seven years, accompanied in all such convictions with confiscation of all their property, real and personal, to the Crown, or lord of the Manor.

Cases not described in the indictment as felonious are prosecuted "au Criminel ordinaire," and are subdivided into two classes.

The first for serious misdemeanours, in which the offender is sued "à se voir adjuger à telle peine punition ou châtiment corporel que la Cour trouvera condigne," and may be condemned to flogging, the pillory, banishment for a term not exceeding six years, or imprisonment in the public gaol for a term seldom exceeding six months, part of which may be solitary and on bread and water.

The second for offences which are not considered as infamous, or showing great moral turpitude, in which the offender is sued "à se voir adjuger à telle peine punition ou amende que la Cour trouvera condigne," and may be condemned to imprisonment, part of which may be solitary and on bread and water, or to a fine to the Crown.

Cases "en Police Correctionnelle" are summarily disposed of, and apply to all offences, which the sitting Court thinks, if proved, to be adequately punished by an imprisonment of not more than one month, part of which may be solitary and on bread and water, or by a moderate fine. In these cases the charge is verbally stated by the constable who produces the offender; and, the witnesses ordered to appear by the constable, as well as those whom the prisoner may have desired the constable to warn on his behalf, having given their evidence *vivâ voce*, the prisoner may address the Court himself or by counsel, and the "conclusions" of the Law Officers are taken. The Court then decides upon the guilt or innocence of the accused and the adequate punishment.

John de Havilland Utermarck, Esq. Contrôle de la Reine.
August 8th, 1846.

Cases for the recovery of penalties for infringement of Acts of Parliament or of local ordinances are called "actions pour amendes." In these, the Law Officers may sue jointly or separately, as public prosecutors, or separately with an informer, and the offender may defend himself by counsel. If found guilty, he is condemned to the whole or a portion of the fine mentioned in the Act of Parliament or ordinance on which he is sued, and his person or property may be taken in execution on the judgment.

Cases of slander, libel, assault and battery, for "crimes ou délits privés qui n'intéressent que les particuliers qui se trouvent offensés et non le repos et la tranquillité publique," are called "causes au petit Criminel," and are prosecuted by one of the Law Officers and the plaintiff thus: "A. B." (plaintiff) "et Officiers de la Reine joints," the other Law Officer being heard for the defendant, and both receiving fees from their respective clients. Should the defendant be found guilty, the Court invariably sentence him to pay a fine to the Crown, in addition to the damages payable to the plaintiff, and costs.

Actions "en Clameur de Haro" and "en Nouvelle Dessaisine" for disturbance of real property, and infringements of the rights of the proprietor, are also sued "au petit criminel" in a similar manner, and subject either of the parties (plaintiff or defendant) to a fine to the Crown, independently of the civil reparation.

I cannot close my answers to this series without pointing out two defects which force themselves on my consideration in connexion with these questions.

The first is the necessity of investing the Court of Alderney with some kind of criminal jurisdiction.

The second, the necessity of some change in the manner of proceeding "au petit criminel." It is a matter of some difficulty to me whether such actions should be treated as purely civil, or whether the plaintiff should not be bound to employ one of the Law Officers, whose duty would oblige him to examine into the case before entering it.

JOHN DE H. UTERMARCK,
*Her Majesty's Contrôle.*

*Manor Place, Guernsey, August* 8, 1846.

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No. 5.

*The Answers of Robert M'Culloch, Esq., Advocate of the Royal Court of Guernsey to the Second Series of Questions proposed by the Commissioners.*

Robert M'Culloch, Esq., Advocate.
August 8th, 1846.

1. Some uncertainty exists on this subject. It is generally considered that a person becomes indictable at the same age at which he becomes admissible as a witness, being the age of puberty, which is held to be fourteen years in males and twelve in females. There are, however, a few cases on record in which persons of an earlier age have been tried and convicted; and, when children are charged with petty thefts or other minor offences, the Court is in the habit of exercising summary jurisdiction and awarding a trifling punishment, when they appear to have sufficient capacity to be conscious of the nature of crime.

2. If it appears that the party charged was of unsound mind at the time of the commission of the offence, he is discharged from the prosecution, and means are to be taken for placing him in safe custody. The test of such unsoundness of mind I conceive to be, that, at the moment of the commission of the offence, the party charged was under the dominion of insanity, and was impelled to it by a morbid delusion.

3. A married woman is not considered responsible to the criminal law when she appears to have acted under the coercion of her husband, except in cases of treason and homicide. Coercion is not, however, fully presumed from the mere fact that the husband was present at the commission of the offence, some additional evidence of coercion derived from the circumstances of the case being required to free the wife from responsibility.

4. I have no knowledge of any case of this sort having occurred in the Island, and therefore can do no more than express my private opinion, which is, that, except in cases of treason and homicide, a person would be relieved from responsibility who had acted under such compulsion as was calculated to induce a well-grounded fear of death or of grievous bodily harm.

5. (1.) A party charged with an offence, who was not the actual perpetrator, but was present at the time of the offence, and assisting the actual perpetrator by watching, counsel, or otherwise, would be convicted of the offence itself; but the same punishment would not necessarily be inflicted on him as on the actual perpetrator.

(2.) A party not present at the time of the offence, but having instigated or assisted by counsel or otherwise the actual perpetrator before the time of perpetration, could not be convicted of the principal offence.

(3.) A party not present at the offence, but having, after the perpetration, assisted by counsel or otherwise the actual perpetrator, either in attaining the end aimed at or in escaping from justice, could not be convicted of the principal offence.

6. In the first case supposed in the last question, the party present and assisting the actual perpetrator at the time of the offence is charged with the principal offence. In the two other cases supposed, the party instigating or assisting is charged with a specific crime as a participator in the perpetration of the principal offence. But mere counsel given to the perpetrator, either before or after the commission of the offence, would not render the party who had given such counsel responsible to the criminal law.

7. It is the invariable practice to lay a separate indictment against each party charged with the perpetration of an offence, and against each party charged with instigating or assisting the actual perpetrator or perpetrators. In the several cases proposed in the

GUERNSEY.

*Answers to Questions.*

SERIES II.

Robert M'Culloch, Esq., Advocate.

August 8th, 1846.

5th question it is not necessary that the actual perpetrator should have been previously convicted.

8. I am not aware of any distinction in this respect as to different offences.

9. The doctrine of actual or constructive presence is unknown here. The several cases contemplated in the 4th and 5th queries would have to be determined by the Court as questions of fact on the evidence before them.

10. No more than one person can be charged in a single prosecution. When a party is charged with an offence in which others may have participated, he is charged with having committed it "either alone or with other his accomplice or with others his accomplices."

11. Different offences may be charged in a single prosecution against the same party. And an offence committed by the party alone may be charged in the same prosecution with one committed by him jointly with another person.

12. A prosecution for a public crime must be instituted within twenty years from the commission of the offence. Batteries, assaults, and other offences of the same nature, not sufficiently grave to amount to public crimes, must be prosecuted within a year and a day. The words of the law are "Plainte d'excès et mal façons de corps, se doit faire dedans l'an et jour du delict mais suite de homicide et d'autre crime public ne se prescrit que par le laps de vingt ans, comme il est dit de crime de faux, *in l. querela C. de fals.*"

13. In order to subject an offender to a prosecution by the criminal law of Guernsey, the offence must have been committed within the bailiwick, which comprehends the Island of Guernsey, Alderney, and Serk, and the adjacent Islets.

14. There is no substantial distinction with respect to apprehension, trial, or punishment, or any of the incidents thereto respectively, between offences committed in different parts of the bailiwick of Guernsey. Parties charged with having committed offences in Alderney or Serk are sent to Guernsey in the custody of an officer; and the charge is investigated in the same manner as if the offence had been committed in Guernsey.

15. Independently of cases of minor offences, in which the court exercises summary jurisdiction, there are two classes of indictable offences, the second of which is subdivided into two degrees. They are distinguished by the form in which the indictment is laid and the difference in the punishment which may be awarded.

(1.) Cases "au grand criminel," or "criminel extraordinaire," in which the punishment may be death or banishment from the bailiwick for a period of not less than seven years (such banishment being generally accompanied by corporal punishment or imprisonment), involving the confiscation of the offender's property both real and personal. The action runs thus: "Les Officiers de la Reine actionnent A. B. à se voir adjuger aux peines et punitions imposées par les loix pour avoir le dit A. B. félonieusement" committed the crime of &c. &c. In these cases the evidence is taken down in writing, as explained in my answer to the 17th question of the first series, and the punishment above mentioned cannot be awarded unless it has been so taken down. It is moreover essential that the word "félonieusement" should appear in the action in order to such punishment being awarded. The prisoner would not be acquitted were this word omitted; but, if found guilty, he could only be sentenced to a punishment of inferior degree.

(2.) Cases "au criminel ordinaire," sometimes called "au criminel" simply. These are subdivided into two classes. (Firstly.) Offences which may be punished with corporal punishment, imprisonment, and banishment from the Bailiwick for a period not amounting to seven years. The action runs thus: "Les Officiers de la Reine actionnent A. B. à se voir adjuger à telle peine punition ou châtiment corporel que la Cour trouvera condigne pour avoir le dit A. B." committed the crime of &c. &c. (Secondly.) Offences which can only be punished by fine or imprisonment. The action runs thus: "Les Officiers de la Reine actionnent A. B. à se voir adjuger à telle peine punition ou amende que la Cour trouvera condigne pour avoir le dit A. B." committed the crime of &c. &c. In these two classes of cases the word "félonieusement" is not used, and the witnesses are examined vivâ voce at the trial.

There are also other matters which are treated as partaking of the nature of criminal proceedings.

(1.) "Causes en adjonction," which are actions brought for the recovery of damages in cases of battery, assault, libel, and slander, and of which I have spoken in my answers to the 33rd and 34th questions of the first series.

(2.) Actions in cases of Clamour of Haro and Nouvelle Dessaisine, of which I have also spoken in my last mentioned answers.

These two classes of proceedings are designated as proceedings "au petit criminel," or "causes mixtes."

(3.) Actions brought for the purpose of levying fines imposed by Acts of Parliament in force in Guernsey, or by local ordinances. These may be brought ex officio by the Crown Lawyers or either of them, or by an informer jointly with the Crown Lawyers or either of them.

In these cases, as in those of a strictly criminal nature, no appeal is allowed. The proceedings must take place before the Bailiff or Lieutenant Bailiff and at least seven jurats, except in cases of the third class, relating to the infraction of local ordinances, in which the fine sued for does not exceed thirty livres tournois, equal to 2*l.* 4*s.* 3½*d.* sterling, which may be disposed of summarily by the President and two Jurats, under the authority of an Order in Council of the 19th June, 1844.

ROBERT M'CULLOCH, *Advocate.*

*Guernsey, 8th August,* 1846.

No. 6.

*The Answers of Henry Tupper, Esq., Advocate of the Royal Court of Guernsey, to the second Series of Questions.*

1. The age of puberty, fourteen years in males and twelve in females, is generally considered the age at which persons are strictly indictable, this being the age when persons become admissible as witnesses; but there are precedents, where persons under fourteen or twelve respectively, appearing to be "doli capax," have been tried and convicted. When children are charged with petty thefts or other minor offences, a punishment commensurate with the offence is awarded by the Court.

2. If on the trial evidence be adduced to prove that the party charged was of unsound mind, he is discharged from the prosecution, and steps are taken to secure his person. I am asked what is the test of unsoundness of mind? I know of none: unsoundness of mind, I presume, depends on the facts proved in evidence. If the Commissioners will favour me with the test of mental soundness, I might probably give the converse as the test of mental unsoundness.

3. Coercion of the husband, except in cases of treason and homicide, would relieve the wife from responsibility to the criminal law. But even his participation with the wife in the crime of which they are accused would not be alone sufficient evidence of coercion; substantive evidence of coercion would be required.

4. I am not aware of any. Neither do I think that any party could successfully allege coercion as a relief from responsibility, except it were coercion calculated to induce fear of death or grievous bodily harm.

5. (1.) He would be charged with the principal offence, tried and condemned, as an accomplice.

(2.) He would be tried on a specific indictment.

(3.) Idem. But I do not conceive that mere counsel given would be indictable, certainly not that given after perpetration of the crime.

6. Answered as above.

7. A separate indictment is always made out against each accused, whether he be tried as a principal or on a specific charge as an accomplice either before or after the fact, or otherwise. Previous conviction of the actual perpetrator is not necessary; but proof of the principal crime is required before an accused can, on a specific action, be convicted as an accessory.

8. I am not aware of any.

9. The cases contemplated in the preceding queries would be considered by the Royal Court as questions of fact, and determined on the evidence adduced. The abstract doctrine of constructive presence is not much thought of here.

10. A separate indictment is preferred against each accused; but there are frequently several charges in each indictment, in some of which there may be accomplices. The accused is consequently charged with having committed the offences imputed to him, either alone, "or with other his accomplice, or others his accomplices."

11. Answered in the preceding.

12. Prosecution of a crime must be entered withing twenty years of the commission. Prosecution for batteries, and other offences, not amounting to public crimes, are limited by the lapse of a year and a day.

13. Within the Bailiwick, which includes the islands of Guernsey, Alderney, Sark, and the other adjacent Islets.

14. There is no distinction. Persons accused of crime in Alderney or Sark are sent to Guernsey in the custody of an officer. The witnesses also are brought over, and the charge is investigated and tried by the Royal Court of Guernsey.

15. Yes.

1°. Summary jurisdiction is exercised by the Royal Court sitting as a Police Court to try minor offences, as explained in the answers to questions in Series, No. 1.

2°. "Les Causes en Clameur de Haro et Nouvelle Dessaisine" are mixed civil and criminal actions, entered in cases of trespass or usurpation on real property.

3°. "Les Causes en adjonction" are mixed civil and criminal cases, entered for the recovery of damages in cases of assault, defamation, &c., and to which the Crown nominally becomes party, in order that, if the public peace have been endangered or disturbed, a fine be awarded in favour of the Crown. But, as I have before observed, in answer to the first series, this form of procedure has become an abuse detrimental to the ends of justice, and in which the public weal is altogether overlooked.

4°. Prosecutions for the recovery of fines arising out of the infraction of local ordinances, &c.

5°. Prosecutions "au criminel."

6°. Prosecutions "au grand Criminel."

7°. Prosecutions "au grand Criminel," in cases of treason, false coining, and striking the Bailiff or Jurats in the exercise of their offices; in which three exceptional cases the trial is prosecuted by the Royal Court, but the punishment is especially reserved to the Crown.

There are separate forms of procedure for most of these cases: but it would be needless to give them at length.

## ANSWERS TO THE THIRD SERIES OF QUESTIONS.

No. 1.

GUERNSEY.

*Answers to Questions.*

SERIES III.

P. S. Carey, Esq., Bailiff.

*The Answers of P. S. Carey, Esq., Bailiff of the Island of Guernsey, to the Third Series of Questions.*

1 and 2. A. With respect to offences punishable summarily. When a witness is produced against or for the party charged, the evidence is given by the witness in the presence and hearing of the accused party, and of the tribunal which has to decide on the charge. The evidence of such a witness is given orally, partly by way of statement, and partly on questions put to him at the time by the court, the Crown officers, or the party accused.

B. With respect to proceedings previous to commitment. When a witness is produced against or for the party charged, the evidence is given by the witness, out of the presence and hearing of the party accused, in the presence and hearing of the tribunal which has to decide whether the accused is to be committed or not. The evidence of such a witness is given orally, partly by way of statement, and partly on questions put to him by the Court.

C. In proceedings "au grand criminel." When a witness is produced *against* the party charged, the evidence is given by the witness out of the presence and hearing of the accused party, in the hearing and presence of the *Cour ordinaire,* but not in the hearing and presence of the *Cour en corps,* which has to decide on the guilt or innocence of the accused. The evidence of such a witness is given orally by the witness, in answer to questions orally put to him at the time by the Court, the questions and answers being severally taken down in writing by the Greffier. When the witness is to be cross-examined, the mode of proceeding is the same, except that the prisoner and his counsel are present. When a witness is produced *for* the party charged, the mode of proceeding is the same as with a witness produced *against* him, except that, in this case, the evidence is given in the hearing and presence of the prisoner and his counsel.

D. In proceedings *à l'ordinaire.* When a witness is produced against or for the party charged, the evidence is given by the witness in the presence and hearing of the accused party and of the tribunal which has to decide on his guilt or innocence. The evidence of such a witness is given orally, partly by way of statement, partly on questions put to him at the time by the Crown officers, the counsel for the accused, or the Court.

It will be observed that in these answers I have not said anything of the presence of the *prosecutor.* There is no private person to whom that term can in any sense be applied. In cases before the *Cour ordinaire* sitting as a Police Court, the charge is brought forward by the constable; but he can hardly be termed a prosecutor. The proceedings against the accused are conducted in Court by the Crown officers; and they are present at the examination of every witness, whether produced for or against the party charged.

3. Evidence must be given upon oath, except in cases where an affirmation is allowed. The only difference, that I know of, in this respect, is that sometimes, in a preliminary enquête before the *Cour ordinaire,* children not old enough to take an oath have been allowed to make their statement without oath. This statement, however, has not been taken as evidence, but merely to assist the Court in its subsequent enquiries.

4. Children cannot take an oath before the age of puberty. The age of puberty, as I have had occasion to observe in my answer to SERIES No. 2, *Question* No. 1, is fixed at fourteen in males, and twelve in females.

5. From the necessity of an oath, I infer the necessity of religious belief.

6. I understand the rule to be, that conviction of felony or perjury renders a person incompetent as a witness for or against a party charged with an offence.

7. The competency of such a witness may be restored by a pardon. I may also observe, that Stat. 9 G. 4, c. 32, has been registered in the island.

8. I apprehend that, two persons being indicted for the same offence, one of them is not admissible as a witness on the trial of the other.

9. Supposing it to appear that the two persons so indicted were accomplices, it is in the discretion of the Court, on the application of the Crown officers, to order the proceedings against one of them to be abandoned, in order to make him admissible as a witness against the other.

10. There is no precise rule as to the extent to which the evidence of an accomplice requires to be confirmed. It is, however, to be observed, in anticipation of my answer to *Question* No. 26, that the testimony of any one witness, not supported by other evidence, is deemed insufficient to support an accusation.

11. The effect which marriage has upon the admissibility of the husband or wife as a witness, where either of them is charged with an offence, is either to prevent or to destroy it, as the case may be.

The husband can not, under any circumstances, be a witness for or against the wife; nor the wife for or against the husband. I understand this rule to extend even to the case where one of the parties is charged with having committed personal violence against the other.

12. No incompetency arises on the score of any consanguinity or affinity with the *accuser*, there being, as I have before had occasion to observe, no individual to whom that title can apply. But, with respect to the relatives of the party charged, the case is otherwise; the general rule is that no person who is related to the party charged, whether by consanguinity or affinity, as first cousin or in any nearer degree, is competent as a witness in his favour, nor can any such person be compelled to give evidence against him.

13. It is competent to the Court, *at the Interrogatoire* (the nature of which I have described in my answer to SERIES No. 1, *Question* No. 6), to question the party charged touching the offence he is charged with, or to ask him any questions tending to explain the evidence previously given.

14. I apprehend that the statements of the party charged, or his conversations with third persons whenever made, are admissible in evidence against him, and that such statements or conversations are admissible in his favour, if made recently after the transaction in question, or, generally, "*dans un temps non suspect.*"

15. A statement made under the influence of a promise or a threat would not be admissible in evidence against the party who made it.

16. A confession is not conclusive evidence of guilt; the person who made it is, notwithstanding his confession, permitted on his trial to contend that he is not guilty, and, if need be, to produce evidence in proof of his innocence.

17. The general rule is that hearsay is not evidence. This rule is subject to exceptions, in particular with respect to statements made by a party "*dans un temps non suspect.*" With respect to the admission of dying declarations, I understand that the rule is the same as in England. I must, however, observe that in the *procès ordinaire*, where the evidence is taken *vivâ voce*, the witnesses being usually allowed to tell their own story, they frequently introduce matter which is not strictly evidence without being interrupted; and that, even when a witness is under examination by counsel, it not unfrequently happens that hearsay evidence, not being objected to by the counsel on the other side, is allowed to be gone into.

18. I apprehend the rule to be that parol evidence of a written document can not be given till the non-production of the document has been accounted for to the satisfaction of the Court.

19. With respect to any written document which the accused wishes to put in evidence, I must recal attention to the fact that there is no such person as an accuser. No individual who stands to the accused in the position of an opposite party. Any individual who may have documents in his possession is to be dealt with by the party charged as a witness. But any document which comes into the possession of the Crown officers it is their duty to produce, whether it tells in favour of the accused or against him. With respect to any document in the hands of the accused, I am informed that the Crown officers have the right to serve him with a "*Signification*," or notice to produce it, and that, in default of his so doing, secondary evidence is admitted. But I am not aware of any case in which this course has been pursued.

20. When it is necessary to prove the execution of any written instrument, this is done by proof of the handwriting of the person who executed it, or otherwise, according to the nature of the instrument. Where there are attesting witnesses, it is sufficient that two of them be produced, or, if dead, that the handwriting of two be proved. I am not aware of any difference in the mode of proof depending on the age of the instrument; the English rule that, under certain circumstances, an instrument thirty years old proves itself seems to be unknown in Guernsey.

21. The Seal of a Court of Justice, or of a Municipal Corporation proves itself.

22. Evidence of the character of the party accused may be given for him at the trial. But I apprehend that the statement of any particular fact is not, strictly speaking, evidence.

23. A witness may refuse to answer a question on the ground that it may subject him to criminal liability; or, as I understand, on the ground that it may discredit him: but not on the ground that it may subject him to civil liability.

24. I have known evidence given of the bad character of a witness, such evidence being confined to general reputation. I apprehend that such evidence might be met by the opposite evidence of any other witness sworn on the trial, who could speak to the character of the witness whose credit has been impeached.

25. A witness may be asked what he has formerly said; but, before evidence can be given to contradict his answer, I apprehend that it is necessary that he should be asked specifically whether or not he said that which is intended to be proved.

26. The testimony of one witness, not supported by other evidence, is deemed insufficient. As the rule is expressed by Domat, *Loix Civiles*, liv. iii. tit. 6, sec. 3. "Un seul témoin, de quelque qualité qu'il puisse être, ne fait point de preuve."

27. With respect to the payment of witnesses, I refer to the answer of the Queen's Procureur.

PETER STAFFORD CAREY,
*Bailiff of Guernsey.*

GUERNSEY.

*Answers to Questions.*

SERIES III.

Jurats of the Royal Court.

August 29th, 1846.

No. 2.

*The Answers of the Jurats of the Royal Court of Guernsey to the Third Series of Questions.*

1, 2. These questions have already been, in great measure, answered in the replies to Series No. 1. It is however necessary to observe that there is, properly speaking, no prosecutor in purely criminal actions. The suspected party is first brought up by a constable who prefers the charge; when the party is committed, the Crown officers are then empowered by the *Cour ordinaire* to conduct the prosecution; and in this respect they act, both in theory and in practice, not as opposed to the prisoner, but as seeking the ends of public justice. It has already been stated that before the commitment the witnesses are heard separately and in private before the "*Cour ordinaire*," assisted by the Crown officers, and not in the presence of the prisoner. At this stage the evidence is always given *vivâ voce*. After the commitment, there is a distinction between the "procès à l'extraordinaire," in which the evidence is all taken in writing before the day of trial, and the "procès à l'ordinaire," in which the evidence is taken *vivâ voce* at the trial. The details of these different proceedings have been already given. It should be added that, in examining a witness *vivâ voce*, it is usual to commence by calling on him to state what he knows of the facts of the case; afterwards, the Crown officers, the Court, and the counsel for the accused, put the witness such questions as may be necessary to explain his statement or to elicit further facts. In cases where the evidence has to be taken down in writing, it is also usual to begin by calling upon the witness to state the facts he knows. He is then further questioned as the Court thinks fit, the interrogatories and the answers thereto, being taken down in writing at the time. At the confrontation, the interrogatories of the prisoner's counsel and the answers of the witness are reduced to writing in the same manner.

3. It is necessary that, at all stages of the proceeding, the evidence relating to a criminal charge should be given under the sanction of the oath of the witness, except he be a quaker, and then his affirmation is taken as equivalent to his oath.

4. No person is admitted to give evidence before the age of puberty, which for males is fourteen, and for females twelve years of age.

5. We are not aware of an instance having ever occurred in which a witness has been objected to on the ground of a want of religious belief. But it can hardly be doubted that a person would not be allowed to go through the ceremony of an oath who appeared to acknowledge no religious bond whatever.

6. Persons convicted of murder, arson, larceny, perjury, or of any other public crime of a like nature, are incompetent to be heard as witnesses.

7. The competency of such a person as a witness would be restored by a pardon from the Crown. The Act 9 G. 4. c. 32. is registered here: and there is no doubt that it would be acted upon, although, as the name of the Island is not mentioned in it, it is not clear that it has the force of law.

8. A party charged with an offence, so long as the charge continues to be entertained against him, is not capable of being a witness for or against another party charged with the same offence.

9. It is in the discretion of the Court, with the advice of the Crown officers, to direct that a party so charged should be discharged from prosecution in order to become capable of giving evidence against another party charged with the same offence.

10. It is necessary that the evidence of such witness should be confirmed by extrinsic evidence. By our law the testimony of a single, though unimpeachable, witness, unsupported by other evidence, does not constitute proof; the evidence of a party discharged from the prosecution for the purpose of giving evidence would be received with still greater caution.

11. The husband can, under no circumstances, be a witness for or against the wife, nor the wife for or against the husband.

12. There is legally no accuser in cases of indictment; therefore no incompetency can arise on account of the relationship of the witness to such party. The injured party being himself a competent witness, no reason can be urged against the admissibility of any of his relations. With regard to the party charged, his relations by affinity or consanguinity to the degree of first cousins inclusively, if called by him as witnesses, may be objected to, except for the purpose of proving an alibi. If called against him, it is generally understood that they may themselves refuse to appear as witnesses.

13. It is competent for the Court, at that stage only of the proceedings called the "interrogatoire," which takes place before the commitment, to question the party charged touching the offence with which he is charged, or in explanation of any part of the evidence.

14. The statements of the party charged, and his conversations with third persons before he has been charged with the offence, are admissible in evidence for or against him; and such statements, if favourable to himself, would have more or less weight, according to the circumstances under which they were made. His statements, after he has been charged, we consider would only be admissible against him.

15. Statements made, by the party charged, under the influence of a promise or threat would be inadmissible in evidence.

16. The confession of a party is taken as evidence of his guilt, provided no error appear, and the *corpus delicti* be proved. But he is, notwithstanding such confession, permitted on his trial to give evidence in proof of his innocence.

17. Hearsay is not considered evidence. With regard to the declarations of a person who at the time believes himself to be dying, the English rule is followed.

18. A witness will not be permitted to state in evidence the contents of a written document, unless its non-production be accounted for to the satisfaction of the Court.

19. There is no opposite party to the accused, unless the Crown officers be improperly considered as such; and they are bound by their duty to produce any document which may have come into their hands, capable of being used as evidence on the trial, whether its contents be favourable to the accused, or the contrary. With regard to the accused, the production of any essential document in his possession may be demanded at the time of the interrogatoire. He cannot be compelled to produce it; but, if he should refuse, a minute to that effect would be made, and the Crown officers would then be at liberty to produce other evidence of its contents at the trial. All other persons having documents in their hands may be called as witnesses, and be required to produce such documents at the trial.

20. In criminal proceedings, proof is required of the handwriting of the person who executed a written instrument produced in evidence, unless it has been admitted as valid by the accused in the "interrogatoire." When there are attesting witnesses, it is sufficient that two of them be produced; or, if that be not possible, that the handwriting of two of them be proved. The necessity of proving ancient instruments is here of such rare occurrence that we do not know that any precise rules exist as to the mode of proof. There is no fixed period, as in England, after which execution of the instrument is presumed without proof.

21. The seals of Courts of Justice, of Governors of Colonies, and of Municipal Corporations in the British Empire, prove themselves. Actes of the Royal Court of Guernsey may be proved by the production of the records themselves in the custody of the Greffier. It is generally understood that foreign documents of a like nature should be certified under the seal of a British Consul.

22. Evidence of the character of the party accused may be given for him at the trial. As no fresh witnesses can be called on the part of the prosecution, such evidence can only be contradicted when the witnesses already sworn happen to be acquainted with the character of the accused. Though, strictly speaking, any particular acts cannot be taken as proofs of character, a witness would not be interrupted when stating instances in support of his good opinion of the accused.

23. A witness may refuse to answer a question put to him on the ground that it may subject him to criminal liability, or that it may discredit him, but not on the ground that it may subject him to civil liability.

24. Evidence may be given of the bad character of a witness, and the statement of particular facts for that purpose may be objected to. In cases which are heard *vivâ voce*, such evidence may be met by opposite evidence, provided it can be obtained from witnesses already sworn on the trial.

25. A witness can be asked what he has formerly said in conversation, and evidence can be given to contradict his answer.

26. The general rule is, that the testimony of one witness does not constitute proof; such testimony requires to be supported by other corroborative evidence either direct or circumstantial.

27. We beg to refer to the answer of Her Majesty's Procureur.

JOHN LE MARCHANT,
HILARY O. CARRÉ,
FREDERICK MANSELL,
THOS. LE RETILLEY,
HARRY DOBRÉE,
THOS. DE HAVILLAND,
T. ANDROS,
EDGAR MACCULLOCH,
} *Jurats of the Royal Court of Guernsey.*

*Guernsey, August* 29, 1846.

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No. 3.

*Answers of Charles De Jersey Esq., Her Majesty's Procureur at Guernsey, to the Third Series of Questions.*

Charles De Jersey, Her Majesty's Procureur.
August 17th, 1846.

1 and 2. In Guernsey, no private individual can prosecute criminally, except in cases in which he has a personal interest, such as in actions for assault, battery, libel, defamation, cries of haro, and nouvelle dessaisine, or (as informer) for penalties for the infringement of Acts of Parliament, or of ordinances of the Royal Court. In all these, one of the Queen's officers is adjoined to the prosecutor: and the limitation, as to the time reckoned from the commission of the offence within which a prosecution must be instituted, is a year and a day.

Parties charged with any criminal offence, the prosecution for which may be instituted at any time during twenty years, reckoned from the commission of the offence, are invariably produced before the Court, in the first instance, by a constable or by an assistant constable, whose duty it also is to warn all necessary witnesses to attend. The proceedings

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*Answers to Questions.*

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August 17th, 1846.

are then carried on as follows. 1st. In cases which are disposed of summarily, evidence is given by the witness in the presence and hearing of the Queen's law officers, of the accused party, and of the tribunal (*i.e.* the *Cour ordinaire* sitting as a Court of "police correctionnelle") which has to decide on the charge. The evidence of the witness is given orally, partly by way of statement, and partly in answer to questions put to him on the part of the Court, of the Queen's officers, or of the party charged.

2ndly. In cases indictable, but not feloniously, evidence is given by the witness, in the first instance and before the commitment, before the "Cour ordinaire," which is not the tribunal which finally has to decide on the charge, though the functionaries who sit in the Cour ordinaire usually form a part of it, and in the presence of the Queen's law officers, but in private, and in the absence and out of the hearing of the accused party, orally, partly by way of statement, and partly in answer to questions put to him by the Court. After the commitment, the proceedings are carried on in the names of the Queen's officers: and, on the day of trial, the evidence of the witness is given orally in the presence of the Queen's officers, of the accused party, and of the tribunal which has to decide on the charge.

3rdly. In cases which are indictable feloniously, evidence is given by the witness in private, and, until the commitment, in precisely the same manner as in cases of offences indictable, but not feloniously. After the commitment, and after the prisoner has chosen his counsel and the Queen's officers have been ordered to prove, the evidence of the witness is taken in private before the Cour ordinaire in presence of the Queen's officers, and out of the presence and hearing of the accused party, partly by way of statement and partly in answer to questions put to him at the time by the Court, and the whole is put into writing. And at a future stage of the proceeding, namely, when the witness is confronted with the accused, thence technically called "La confrontation," the evidence previously taken, and of which a copy has been delivered to the accused, is read in the presence of the witness, of the "Cour ordinaire," of the Queen's officers, of the accused party, and of his counsel who may then put what interrogatories they please to the witness. On a future day the witnesses on behalf of the accused party are examined in his presence, in that of his counsel, and of the Queen's officers before the "Cour ordinaire, on questions put to them at the time by the prisoner or his counsel, or by the Court. The whole of the evidence, as well against as for the prisoner, is put into writing, and read at the trial in the presence and hearing of the Queen's officers, of the accused party, of his counsel, and of the tribunal, that is, of the "Cour en corps," which has to decide on the charge.

3. The law of Guernsey requires that all evidence relating to a criminal charge, except that of Quakers and Moravians, whose affirmation is admitted, shall be given under the sanction of the oath of the witness.

4. A person cannot give evidence before the age of puberty; that age is fourteen years for males, and twelve for females. Children under the age of puberty have sometimes been allowed to give information to the Court before the commitment, but never on oath, nor at the trial.

5. The excluding a party from giving evidence on the ground of "want of religious belief" is a point which has, I believe, never been raised. Our law, speaking of the exclusion of persons from giving evidence under the words "mal renommez," merely says, "ceci est special en ces deux crimes de parjure et de mescreantise, c'est à dire d'hérésie et de mal sentir la foi que la renommée suffise pour débouter un témoin." Terrien, Livre 9e, fol. 394.

6. Conviction of perjury or felony renders a person incompetent as a witness for or against a party charged with an offence.

7. The sovereign's free pardon restores the competency of such person as witness.

8, 9, and 10. A party charged with an offence cannot be a witness either for or against another party charged with the same offence. But a party charged may be admitted evidence for the Crown by the Court on the prayer of the Queen's officers: the evidence of such a witness would be received with much caution, and would require confirmation by extrinsic evidence.

11. The husband and wife can never be witnesses for or against each other.

12. I have already observed that in Guernsey no private person can prosecute for indictable offences, and that all proceedings after the commitment are carried on in the names of the Queen's officers: consequently the question of affinity or consanguinity of the witness with respect to them cannot arise. With respect to the party charged, affinity or consanguinity to the degree of first cousin inclusively is sufficient to cause the witness to be declared incompetent, if objected to by the Queen's officers. A witness within that degree of affinity or consanguinity to a party charged may refuse to declare.

13. Before the commitment, the Court may question the party charged touching the offence: but, after the Interrogatory is taken and the party committed, it is not competent in the Court, or in the Queen's officers, to question the party charged on any point whatever.

14. The statements of the party charged, or his conversation with third persons, "en temps non suspect," are admissible in evidence either for or against him.

15. If such statements have been made by the party under the influence of a promise or threat, they are inadmissible.

16. Perhaps the best answer to this question may be by citing the law, Terrien, book 12, 523. "S'aucun recognoit en lieu commun le crime dont il est suy, lui mesme se juge et damne. Pourveu que le crime soit vérifié et qu'il n'apparoisse de l'erreur de la

Charles De Jersey, Esq., Her Majesty's Procureur.
August 17th, 1846.

confession." Notwithstanding such confession, the party on his trial is permitted to adduce evidence in proof of his innocence.

17. The examination of a witness, whether for or against an accused, is confined to what he knows of his own knowledge; the declaration of a person who, at the time of making it, believes himself to be dying, is admitted.

18. I apprehend that no evidence of the contents of a written document can be received without producing it, or accounting to the satisfaction of the Court for its non-production.

19. Should a written document be in the hands of the Queen's officers they would produce it as a matter of duty. The question with respect to a written document in the hands of the accused has not arisen, that I am aware of, during the last forty years: but I apprehend that, on legal notice being given to the accused to produce it and on his failing to do so, evidence would be admitted of its contents.

20. When there are attesting witnesses, they need not all be produced; two are sufficient. In case of the death of some or of all the attesting witnesses, proof of their handwriting is required. I am not aware that the age of the instrument makes any difference in the mode of proof. It may be proper to observe that the cases alluded to in this question can never arise in matters of real property, as in this Island all deeds for the transfer of such property are passed before the Court in the nature of "Confessions," and are never signed by the parties or by witnesses; and that by a most wholesome law, invariably acted upon, no transfer of real property is valid except it be passed "devant justice."

21. The seal of the Island, the seal of the Ecclesiastical Court of this Island, the seals of Municipal Corporate bodies, the seals of British Courts of Justice, and the seals of any Foreign Courts of Justice, when duly attested by the proper English authorities resident in the countries, prove themselves.

22. Evidence of the character of the party accused may be given for him at the trial. Evidence of particular acts of good conduct may be given in proof of character.

23. A witness may refuse to answer a question on the ground that it may subject him to criminal liability, and also, I apprehend, because it may discredit him, but not that it may subject him to civil liability.

24. Evidence may be given of the bad or good character of a witness. Such evidence may be met by opposite evidence.

25. A witness can be asked what he has formerly said; and evidence may be given to contradict his answer.

26. The evidence of one witness is not sufficient for the establishment of any particular fact without corroborative circumstances.

27. Witnesses are not paid for the expense to which the inquiry has put them. Witnesses residing in this Island are not paid until the commitment; after the commitment they are summoned by the Queen's officers, and are entitled to one shilling and sixpence for each day they attend Court. A witness from Sark is paid passage money, and one shilling and sixpence for each day he remains in Guernsey. A witness from Alderney is paid passage money to and from one Island to the other, and five shillings per day for board and lodging while absent from Alderney, and one shilling for each case each day he attends Court. They are all paid by the Queen's Receiver General from Her Majesty's revenues in Guernsey; but when persons are found guilty they are condemned to costs; and, if they have the means, they are bound to reimburse the Queen's Receiver General.

CHARLES DE JERSEY,
*H. M. Procureur.*

*Guernsey, August* 17, 1846.

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No. 4.

*The Answers of J. De Havilland Utermarch, Esq. Her Majesty's Contrôle at Guernsey to the Third Series of Questions.*

J. De Havilland Utermarck, Esq., Her Majesty's Contrôle.
August 20th, 1846.

1 and 2. These questions are fully answered in Series No. 1.

3. All evidence relating to a criminal charge must be given on oath, with the exception in favour of Quakers and Morvians as admitted in England by Acts of Parliament, some of which are registered in Guernsey.

4. No male under fourteen years of age, or female under twelve, can be admitted as witness.

5. I have never known this question raised; and the law on the subject is obscure: but I apprehend that want of religious belief would exclude a person being admitted as witness.

6. Conviction of perjury, homicide, arson, larceny, or other public crime would render a person incompetent as a witness.

7. The Sovereign's free pardon would restore the competency of such a person; and the Act of 9 Geo. 4, c. 32, being registered in the Island by virtue of an Order in Council, I apprehend the provisions of that Act would be held to apply.

8, 9, and 10. A party charged with an offence cannot be admitted a witness for or against another party charged with the same offence, unless when admitted as evidence for the Crown by permission of the Court, on the prayer of the Law Officers. In practice,

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J. De Havilland Utermarck, Esq., Her Majesty's Contrôle.

August 20th, 1846.

the testimony of such a witness is not considered sufficient for the conviction of the accused without some confirmatory evidence.

11. Neither husband nor wife can, under any circumstances, be admitted as witness for or against each other.

12. As all prosecutions for crime are conducted by, and in the name of, the Law Officers of the Crown, no incompetency from affinity or consanguinity can arise except with the party charged; and this extends to the degree of first cousins inclusively. The Law Officers may summons relations of the accused within that degree as witnesses for the Crown; in which case it is optional with them to give their testimony or to refuse it.

13. The party charged is never questioned except in his "interrogatoire."

14. The statements of the party charged, or his conversations with third persons, are admissible in evidence for or against him; but they must appear to have taken place "dans un temps non suspect."

15. It does.

16. The confession of a party charged with having committed an offence is sufficient evidence of his guilt, provided the offence with which he is charged is proved to have been committed at the time and place and in the manner laid in the indictment. Notwithstanding such confession, he may adduce on his trial evidence in proof of his innocence.

17. It is usual, in practice, for the witness to be told to state generally what he knows about the matter in question. His examination is confined to the facts which he knows of his own knowledge. The declarations made to a witness by a person believing himself dying and since dead would, I conceive, be admissible as evidence, with the restrictions adopted by the English law.

18. I do not conceive that the contents of a written document can be stated in evidence without the production of the document, unless the Court be satisfied as to the cause of its not being produced.

19. The Law Officers of the Crown are bound to produce every document they may have in their possession as "pièce des procès," and, in practice, do so during the interrogatoire of the prisoner. During this proceeding the prisoner is asked to produce any written document he may have in his possession bearing on the case; should he refuse to do so, I apprehend, the Law Officers might serve on him a written notice (by means of the Queen's Serjeant) to produce it on the trial, and in default thereof might offer evidence of its contents.

20. When witnesses have attested the execution of a written instrument, two of their number must be produced. In case of the death of all the attesting witnesses, proof of their handwriting is required. I am not aware of any rule respecting the age of an instrument.

21. The seal of the Bailiwick, that of the Ecclesiastical Court of the Island, that of a Municipal Corporate body in England, of an English Court of justice, or of any Foreign Court of justice attested by the English Consul or other functionary resident in such foreign country, all respectively prove the document to which they may be annexed.

22. Evidence of the general character of the accused may be produced on his trial; and evidence of particular acts of good conduct in proof of such character is usually allowed. The Law Officers of the Crown, in giving their "conclusions" as to the punishment to be awarded, may, and in practice do, usually produce records of former convictions of the accused.

23. A witness may refuse to answer a question, on the ground that the answer may subject him to criminal liability, but not on the ground that it may subject him to civil liability. I do not know of any case in which the question of discredit has been raised.

24. Evidence of the bad character of a witness can be given; and such evidence may introduce particular facts. This may be met to the fullest extent by opposite evidence.

25. A witness can be asked what he has formerly said; and evidence can be given to contradict his answer.

26. The general rule is that two witnesses are required for the complete proof of a particular fact. In practice, this having been found unsatisfactory, the evidence of one witness is sufficient on each particular circumstance.

27. No witnesses resident in Guernsey are paid, except for their attendance on summonses for the trial, in which case they are paid 1*s.* 6*d.* a day on each summons. Witnesses, coming to the Island from Alderney or Serk to give testimony concerning offences committed in those Islands, receive their passage money and board while in the Island, with a similar fee of 1*s.* 6*d.* for each day's attendance at Court. Medical men, when required by the Court to attend an inquest, receive 10*s.* 6*d.* for their depositions concerning the state, &c. of the body and cause of death, and 1*l.* 1*s.* if there is a regular post mortem examination. The whole of these expenses are paid by Her Majesty's Receiver General out of the Crown Revenues of the island.

JOHN DE H. UTERMARCK,
*Her Majesty's Contrôle.*

*Manor Place, Guernsey, August 20th,* 1846.

No. 5.

GUERNSEY.

*Answers to Questions.*

SERIES III.

Robert M'Culloch, Esq., Advocate.

August 29th, 1846.

*The Answers of Robert MacCulloch, Esq., Advocate of the Royal Court of Guernsey, to the Third Series of Questions.*

1. This question is answered in my replies to the 6th, 9th, 17th, and 18th questions of the first series.

2. This question is also answered by my above mentioned replies. I need only add, that it is the practice to call upon witnesses to make a statement of the facts within their knowledge before any questions are put to them.

3. All evidence relating to a criminal charge must be given, at every stage of the proceedings, under the sanction of the oath of the witness. The evidence of Quakers is received upon their solemn affirmation.

4. No person under the age of puberty can be admitted as a witness. Fourteen years is considered the age of puberty in males, and twelve in females.

5. I am of opinion that he can be excluded.

6. Conviction of perjury, homicide, arson, larceny, or any other public crime of a like nature, renders a person incompetent as a witness either for or against a party charged with an offence.

7. The ancient law, as laid down by Terrien, is silent with respect to the restoration of the competency of such persons as witnesses, though I have no doubt that it would be restored by a Royal pardon. I conceive that the provisions, relating to this subject, contained in the statute 9 G. 4, c. 32, would now be followed, that statute having been registered in Guernsey in obedience to an Order in Council, dated 3rd January, 1840. The subject is not, however, free from difficulty, the Island not being named in the Act.

8 and 9. A party charged with an offence is incapable of being a witness for another party charged with the same offence. He is also incapable of being a witness against such party, unless the proceedings against him be abandoned by the Crown Lawyers, with the sanction of the Court, in order to enable him to give evidence.

10. The testimony of a party who has been admitted to give evidence for the Crown must be confirmed by extrinsic evidence. I cannot undertake to define the extent to which such confirmation is necessary, as that must depend on the circumstances of the case.

11. A husband cannot, under any circumstances, be a witness for or against his wife, nor a wife for or against her husband.

12. The Crown Lawyers being the sole prosecutors in all purely criminal proceedings, no incompetency arises from the affinity or consanguinity of the witness with the injured party, who is himself admitted as a witness. No person can be admitted to give evidence for a party charged with an offence who stands to such party in the relationship of husband or wife, or in the relationship of father or mother, son or daughter, brother or sister, uncle or aunt, great uncle or great aunt, nephew or niece, great nephew or great niece, or cousin germain, whether by consanguinity or affinity. These relatives, with the exception of the husband and wife, are, however, admitted for the purpose of proving an alibi. Persons standing in the above mentioned degrees of relationship to an accused party, except the husband and wife, may be admitted as witnesses against him; but it is generally understood that they cannot be compelled to depose.

13. It is not competent either to the Crown Lawyers or the Court to question the party charged, except at the period when his "Interrogatoire" is taken, as explained in my answer to the 6th question of the 1st series.

14. The statements of the party charged, or his conversations with third persons, before or after he has been charged with the offence, are admissible in evidence against him. The statements made by him before he was charged with the offence are admissible in evidence for him, provided such statements were made "en temps non suspect."

15. Statements made by the party charged, under the influence of a promise or a threat, are inadmissible in evidence.

16. The confession of a party charged with an offence is evidence of his guilt, provided the corpus delicti be substantiated by other evidence, and provided his confession do not appear to be erroneous ("Pourvu que le crime soit vérifié et qu'il n'apparaisse de l'erreur de la confession"). He is, notwithstanding such confession, permitted on his trial to adduce evidence in proof of his innocence.

17. Hearsay may be objected to in criminal cases, except with respect to a declaration made by a person who believed himself to be dying at the time of making it, the English rules on the subject of dying declarations being followed here.

18. A witness is not permitted to state in evidence the contents of a written document, unless its non-production be satisfactorily accounted for.

19. The circumstances supposed in this question can rarely occur in Guernsey, in consequence of the Crown Lawyers being the accusers in all criminal prosecutions, and in consequence of the "Interrogatoire" to which the accused is subjected. The Crown Lawyers are clearly bound to produce every producible document in their hands; and the practice is to exhibit all such documents to the accused when his "Interrogatoire" is taken, and to lodge them at the Greffe Office until the trial. If the party accused were supposed to have in his possession any document which was considered important, he would be called upon at his "Interrogatoire" to produce it; and, should he refuse to do so, a minute would be taken by the Greffier of such refusal, which would authorize the introduction of other evidence to prove the contents of such document.

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*Answers to Questions.*

SERIES III.

Robert M'Culloch, Esq., Advocate.

August 29th, 1846.

20. In consequence of the mode of procedure to which I have referred in my answer to the preceding question, proof of the execution of a written instrument does not often become necessary, such instruments being generally produced at the time of the "Interrogatoire" of the party accused, and frequently admitted by him. Proof of handwriting is generally required; but there cannot be said to be any particular rules respecting the proof of the execution of written instruments, the Court exercising considerable discretion in such cases according to circumstances.

21. When Actes of the Royal Court of Guernsey are required to be produced in evidence, the originals are generally produced in Court in the custody of the Greffier. Copies of such Actes, authenticated under the seal of the Bailiwick, are admitted as authentic. Copies of contracts or deeds regarding transfers of real property in Guernsey (which are always passed before the Court) are also evidence when produced under the seal of the Bailiwick; or the books in which such contracts have been registered at the Greffe Office may be produced in the custody of the Greffier. Acts or judgments of Courts of justice in every part of Her Majesty's dominions are regarded as authentic when under the seals of such courts. Documents certified under the official seals of Municipal Officers in the British empire, or Governors of Colonies, are also regarded as authentic. It is generally considered that foreign documents of the above description ought to be further certified under the official seal of a British Consul or other like functionary.

22. Evidence of the character of the party accused may be given for him at the trial. In cases in which the evidence is given vivâ voce at the trial, the Crown Lawyers may recal any of the witnesses who have been examined on the part of the prosecution, or may examine any of the witnesses called by the party charged, to contradict such evidence of character; but they cannot call any fresh witnesses. A witness is permitted to instance particular acts of good conduct. The Crown Lawyers may produce former convictions against an accused party.

23. A witness cannot refuse to answer a question put to him on the ground that the answer may subject him to civil liability; but he may refuse to answer on the ground that the answer may subject him to criminal liability, or may discredit him.

24. Evidence may be given of the bad or good character of a witness; but particular facts cannot be introduced. Such evidence is allowed to be met by opposite evidence. I must, however, observe that, in the case of offences described in the indictment as felonious, in which the evidence is all taken down in writing, the limits within which such evidence is restricted are, from the nature of the proceedings, exceedingly small. In cases in which the evidence is given vivâ voce there is more latitude; but, as all the witnesses on both sides are sworn together and no fresh witnesses can afterwards be called, no evidence of the bad or good character of the witness can be derived except from the other witnesses who have sworn at the same time. If a person who has been summoned as a witness is objected to on the ground of his being inadmissible by reason of bad character derived from the commission of crime, such objection is made, as in every other case in which a witness is objected to as incompetent, before the swearing in of the witnesses. Should it be necessary to bring forward witnesses for the purpose of substantiating such objection, as, for example, to prove that the witness objected to had formerly been convicted of perjury, such witnesses may again be objected to on the ground of incompetency; but witnesses called to substantiate an objection to a witness who has himself been called to substantiate an objection to another witness cannot be objected to. "Et est à noter qu'on peut reprocher les témoins produits pour la vérification des saons et sur ce appointer les parties en preuve. Mais on ne peut reprocher les témoins produits sur les secondes reproches. Quia testes reprobatorios probatoriorum reprobare licet: sed reprobatorios reprobatoriorum reprobare non licet. Sinon qu'on fit promptement apparoir par lettre de saon qu'on voudrait alléguer contre les derniers témoins réprobatoires."

25. A witness may be asked, with a view of impeaching his present evidence, what he has formerly said; and evidence may be given to contradict his answer. But such evidence can only be derived from the other witnesses who have been sworn at the same time as himself.

26. The rule is as follows: "Tout témoignage doit être en la bouche de deux ou de trois hommes." This rule, however, is not at present construed as meaning that each individual fact must be substantiated by two witnesses de visu, but merely as rendering the unsupported testimony of a single witness insufficient to procure a conviction.

27. Witnesses are not paid for the expense to which the inquiry has put them. When a surgeon is called upon to make a post mortem examination, he receives one guinea if it is found necessary to open the body, and half a guinea if it is not found necessary to do so. These payments are made out of the Crown Revenues of the island. Witnesses are not entitled to be paid for attending Court previous to the committal for trial of the party charged. After he has been committed they are entitled to eighteen pence for each day's attendance. Witnesses from Alderney and Serk are paid their passage money, board and lodging, and one shilling and sixpence for each day they attend at Court. These payments are also made out of the Crown Revenues; but, if the party charged is convicted, the amount may be recovered from him if he has means.

ROBERT MACCULLOCH,
*Advocate.*

*Guernsey, 29th August,* 1846.

No. 6.

GUERNSEY.

*Answers to Questions.*

SERIES III.

Henry Tupper, Esq., Advocate.

*The Answers of Henry Tupper, Esq., Advocate of the Royal Court of Guernsey, to the Third Series of Questions.*

1. The answers given to the questions in Series No. 1 answer this question, to meet which fully would require a statement of the whole system that has already been given.

2. Idem.

3. Yes, except in cases of Quakers and Moravians, as provided by the English Acts of Parliament registered here. There is no difference in this respect in the several stages of the proceedings.

4. Infants under the age of puberty are not admissible as witnesses. Fourteen years old in the male, and twelve in the female, are respectively the ages of puberty.

5. I apprehend that the want of religious belief in a person produced as a witness would determine the court to refuse administering the oath; but it would require the profession of very strong opinions to warrant the exclusion.

6. Conviction of perjury, or of a crime carrying with it civil death, operate against the competency of a witness. In lighter offences he is not held to be admissible while under sentence.

7. The Sovereign's free pardon.

8. No.

9 If the Law Officers of the Crown withdraw their charge against an accused, and pray the Court to have him admitted as evidence for the Crown, such evidence is received.

10. Other confirmatory evidence would be required besides that of such a witness to warrant a conviction.

11. Marriage operates absolutely against the admissibility of the evidence of either husband or wife against each other.

12. Witnesses within the degree of first cousin, either by blood or affinity, can be objected to.

13. The party accused is never questioned after the interrogatory has once been taken, as explained in the answers to series No. 1.

14. Yes. But these conversations would never of themselves constitute an absolute proof.

15. Yes.

16. Not unless the "Corps du délit" be also proved, and the indictment offer no irregularity.

17. The declaration of the witness may strictly be confined to what he knows of his own knowledge. The declaration made to a witness by a person believing himself dying, and who is since dead, would be evidence under the circumstance, for what it is worth.

18. No, except he account satisfactorily for its loss, destruction, or non-production.

19. The Law Officers of the Crown are bound to produce whatever documents they may possess; and, if they believe a document to exist in the possession of the accused, of which they require the production, they may cause the Police to make every search for the same; but, if unsuccessful in the search, I am not aware of any means they have to compel its production. They are bound to make out their own case; and an accused is not bound to criminate himself. If the existence of a document is fully proved, but of which the production is withheld, I conceive that evidence of the contents would be admissible.

20. When proof of the execution of a document is necessary, two witnesses are required either to attest the signature of the principal and of the attesting witnesses, one of whom, at least, is produced if possible. I do not know of any rule respecting the age of an instrument.

21. The acts of courts of justice, or of other bodies or persons, are required to be under the seal of the Court, whether civil or ecclesiastical, or to be duly authenticated under a public or corporate seal. The acts of foreign courts, or of bodies or persons acting in foreign countries, independent of their own seal, require the attestation of the English Consul or other British resident authority; but this latter is not always exacted.

22. Evidence of the character of the party accused can be given for or against him; and particular acts of good or bad conduct may be alleged: but such evidence is susceptible of explanation and contradiction.

23. A witness may refuse to answer a question that will subject him to criminal liability.

24. Evidence, both general and particular, of the character of the witness can be given; and this evidence may be fully rebutted by other evidence.

25. A witness can be asked what he has formerly said; and evidence can be given to impeach his present evidence. But, when the witnesses have been sworn, and the trial has commenced, it is not usual to allow the production of further evidence.

26. The general rule requires two witnesses to establish a particular fact; but one witness, with corroborating facts or evidence, is held sufficient.

27. Resident witnesses are paid one shilling and sixpence sterling per day's attendance. Witnesses from Alderney or Serk receive in addition their passage and board and lodging money.

These expenses in criminal cases are paid out of the Crown Revenues of the Island.

# MINUTES OF EVIDENCE

TAKEN BEFORE THE

## COMMISSIONERS appointed to inquire into the STATE of the CRIMINAL LAW in the CHANNEL ISLANDS.

AT THE COURT HOUSE, ST. PETER PORT, GUERNSEY.

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GUERNSEY.

Charles De Jersey, Esq., Procureur de la Reine.

September 24th 1846.

*Thursday, September* 24, 1846.

*Charles De Jersey, Esq., Procureur de la Reine,* examined.

3282. Will you be kind enough to give the Commissioners the names of the Bailiff and Jurats?—The name of the Bailiff is Mr. Peter Stafford Carey. The names of the Jurats are Mr. Jean Le Messurier, Mr. Jean Le Marchant, Sir William Collings, Mr. Hilary Olivier Carré, Mr. Frederic Mansell, Mr. Thomas William Gosselin, Mr. Thomas Le Retilley, Mr. Harry Dobrée, Jun., Mr. Thomas De Havilland, Mr. Thomas Andros, Mr. Edgar MacCulloch, Mr. William Peter Metivier.

3283. Will you name the gentlemen of the Bar?—Myself, Mr. John De Havilland Utermarck, the Contrôle.

3284. The office of Contrôle answers in some respects to that of Solicitor General, does it not?—Yes.

3285. The Procureur de la Reine being the Attorney General?—Yes.

3286. Are they considered as members of the Bar?—It has been usual, when the Procureur has been obliged to enter a cause for any work done by him for any client, to put "Charles de Jersey, Procureur de la Reine et Avocat de la Cour Royale."

3287. Will that apply exclusively to civil proceedings?—Yes.

3288. Will you give us the names of the rest of the Bar, who are in actual practice?—Mr. Robert MacCulloch, Mr. Thomas John Blondel Falla, Mr. Henry Tupper, Mr. Peter Jeremie.

3289. There are only four in actual practice?—That is all.

3290. The whole number being six?—Yes; the limited number is six.

3291. One gentleman, we understand, at present is suspended?—Yes.

3292. Is the other office absolutely vacant?—Yes.

3293. How long has it been so?—Since Mr. Utermarck has been Contrôle.

3294. How long is that?—A twelvemonth.

3295. (To Mr. *Utermarck.*) Of what standing were you at the Bar when you were appointed?—I was junior member.

3296. When were you first called to the Bar?—In April 1839.

3297. (To Mr. *De Jersey.*) Are the Crown officers appointed by the Crown?—Yes.

3298. Can you trace the origin of the style "Royal Court?" Do you know how early it was called so?

3299. Colonel *De Havilland.* I conceive it was appointed the Royal Court after the King had given fiefs to which he attached jurisdiction: it was necessary to have a Court of Appeal. There is nothing positive in history that I know of: but I consider that it has constantly been called La Cour du Roi. I have never seen any document extant to shew how or when the jurisdiction was transferred from the Court of Rouen to the King in Council; but it seems naturally to have been so.

3300. Your view is, that, upon the separation of the Island from the Duchy of Normandy, there ceased to be any Superior Court, and therefore it became the Cour Royale?—Yes.

3301. How is it styled in the "Précepte d'Assize?"—It is there called La Cour Nôtre Seigneur le Roy. I believe there is no other term used for this Court but the Cour Royale.

3302. In what ancient document is the term Cour Royale first used?—I believe it is used in the Précepte d'Assize.

3303. There are much earlier documents, are not there, than the Précepte d'Assize?—There is the Inquest of Henry the Third.

3304. What is the style of the Court as mentioned in that document?—I do not think it is mentioned in that document.

3305. Can you give us the date of the Précepte d'Assize?—The year thirteen hundred and thirty one.

3306. Mr. *Pierre S. Carey* (*Bailiff*). The following is a Writ in the 4th year of Edward the Third, to which the Précepte d'Assize in the following year was probably the return. It is a Copy of the Record in the Tower of London.

3307. *The same was put in, and is as follows.*

" Inter Recorda Curiæ Cancellariæ in Turri Londiniensi asservata, scilicet in Rotulo Literarum patentium de anno regni Regis Edwardi post conquestum tertij quarto. p. 1, memb. 26 dorso sic continetur.

" De inquirendo de Ministris in Insulis de Gernezeye. Rx̃ dileīs et fidelibz̃ suis Joh̃n de Roches Custodi Insulaꝝ ſuaꝝ de Gerneseye, Jereseye, Serk, et Aurneye, Roƀto de Norton et Wiłło de la Rue Saltm̄. Quia q̃ibusdam certis de causis certiorari volumˢ, qui et quot Ministri nr̃i seu alij officiarij in Insulis p̄dcis existunt qui vadia aut alia feoda a noƀ ꝑcipiunt, et quantum quilibet eor̃ ꝑ se ꝑcipit et a quo tempore ex quâ causâ et qualit̃ et quo modo, assignavimꝰ vos et duos vr̃m, quoꝝ vos, p̄fate Joh̃es, unū esse volumˢ, ad inquirend ꝑ sacr̃m probꝝ et leg̃ hoīnum eāndem Insulaꝝ ꝑ quos rei v̄itas melius sciri poſſit, qui et quot Ministri et Officiarij vadia aut alia feoda a noƀ ꝑcipiunt in Insulis p̄dcīs et pcipe consueverunt, et que et cujusmodi vadia et feoda et a quo tempore ex quâ causâ et qualit̃ et quo modo, ac de alijs artic̄lis p̄missa tangentibz̃. Et ideo vobis mandamˢ qđ ad certos dies et loca quos vos vel duo vr̃m, quoī̄ vos, p̄fate Joh̃es, unū esse volumˢ, ad hoc ꝑvideritis, diligentes inquisicōes supra p̄missis faciatis, vosq; inde, vijs et modis quibz̃ expedire videritis, informetis. Et inquisicōes illas distinctè et apte fc̄as nobis sub sigillis vr̃is vel duoꝝ vr̃m, quoꝝ vos, p̄fate Joh̃es, unū esse volumˢ, et sigillis eoꝝ per quos fce fuerint unà cū vr̃is informacōe et avisamento in hac p̃te sine dilone mitattis et hoc bv̄c. Mandavim' enim ballis nostris Insulaꝝ p̄dctaꝝ qđ voƀ in p̄missis pareant et intendant, et ad certos dies et loca quos vos vel duo vr̃m, quoꝝ vos p̄fate Joh̃es, &c., eis scire faciatis, venire faciant corā voƀ vel duobz̃ vr̃m, quoꝝ, &c., unum esse volumˢ, tot, &c., de Insulis p̄dcis ꝑ quos, &c., in p̄missis &c., et inquiri. In cujus, &c., T. R. apud Wodestok, xvj die Maij."

" ꝑ coīs."

The above is a true copy of the original Record of Chancery remaining in the Tower of London.

W. Illingworth, *Deputy Keeper of the Records.*

*5th June,* 1813.

3308. The *Bailiff.* Here is a document of which the original is in the Tally Office. It is described in Bagâ Vocatâ Jersey et Guernsey. It is of the date 1299. It appears to be Pleas holden before the Justices in Eyre.

*The same was read as follows :—*

" Placite pro Rege apud Portuum St. Petri in Insulâ Gern̄r, coram Magistro Roberto de Leyffet l P *de Wenlock et sociis suis justiciariis ad assisas in Insulâ tenendas assignatis, in Crastino Sti Lucæ Evangelistæ, Anno Regni Regis Edwardi 27°. Nomina Ballivorum et ministrorum Domini Regis in Insulâ Gern̄r in crastino Sti Lucæ Evangel :

" Dyonisius Tillebar, Custos et Receptor dictæ Insulæ.
" Radˢ. Gant Capitalis, Ballivus Juratus.
" Will Le Marchand, Prepositus Regis Juratus.
" Will$_{m}$. Tuks, Bedellus Juratus.

" Nomina Juratorum Curiæ Regis.

" Mat de Curia, Willᵐ Le Gros.
" Petrus Le Estack.
" Wills. de Cosington.
" John Le Marchand.
" Robert Cokerel.
" Willˢ. Le Gay.
" Petrus Le Hagus.
" Ric. Bernard, loco Petri Erreand qui postea venit.
" John Molenio.
" Robᵗˢ. Blaunch, loco Rad. Toulet qui postea venit.
" Jordanus Chaffin."

We have several ancient documents of this kind from 1400 to the present time. I know there are some earlier than 1400. I dare say Mr. MacCulloch would be able to produce dates considerably earlier. Here (*producing them*) are certain ancient contracts, which I produce merely for the purpose of showing the Title of the Court. The first is of the 5th of November, 1408. The Bailiff is there stiled Bailli de nostre Seigneur le Roi d' Engleterre. The Jurats are called " Jureis de la Court nostre dit Seigneur le Roi." In this of the year 1426, the Bailiff is called " the Bailiff under the Most Noble and Puissant Prince, the Duke of Bedford, the Lord of the Isles ;" and it mentions " jures de la Cour de mon dit seigneur." I can shew you also in a printed work, Berry's History of the Island of Guernsey, a Grant by Letters Patent under the Privy Seal, the 27th Nov., 3rd Henry V., of the Islands of Jersey, Guernsey, Sark, and Alderney, to the Duke of Bedford, who held them en appanage. The same book also contains the Grant of a Public Seal of the 15th of Nov., 7th Edw. I. The Public Seal is this (*producing the same*), which, the Commissioners will observe, contains the Arms of England. He calls it sigillum nostrum. The Seal can only be affixed by the Bailiff.

*The Grant was read as follows.*

" Edwardus, Dei gratiâ Rex Angliæ, dominus Hiberniæ et Dux Aquitaniæ, Ballivis

* Illegible.

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Insularum de Jersey et Guernsey Salutem. Quia homines nostri Insularum prædictarum diversa damna et pericula non modica, quandoque in mari per naufragium, quandoque in terrâ per depredationes et alia viarum discrimina, multo toties hactenus sunt perpessi, pro eo præcipuè quod in insulis illis nullum huc usque sigillum habuimus, cum quo seu per quod brevia hominum de partibus illis consignari, aut ipsorum negotia ibidem possent expediri. Nos ad communem utilitatem hominum partium earundem hujusmodi periculis et damnis congruo remedio prospici cupientes, quoddam sigillum nostrum, quo de cætero ibidem uti voluimus et quod vobis transmittimus, fecimus provideri, ut in posterum brevia, quæ homines Insularum prædictarum hactenùs in Cancellariâ nostrâ Angliæ impetrare consueverunt et de cætero impetrare voluerint, et conventiones et contractus quos ibidem a modo alternatim fieri contigerit, et qui hactenus tantummodo verbo tenus, et non per scripturam fieri solebant, eodem sigillo de cætero consignentur. Ed ideo vobis mandamus quod sigillum illud recipiatis, et per totam terram Insularum prædictarum publicè proclamari faciatis quod omnes illi de partibus illis, qui exnunc brevia nostra prædicta habere voluerint, illa secundum antiquum registrum partium earundem impetrent ibidem, prout hactenùs Cancellariâ nostrâ prædictâ facere consueverunt. Et vos, ballivi prædicti, hujusmodi brevia, atque conventiones et contractus, eodem sigillo a modo consignari facietis, et transcriptum prædicti registri nobis sub sigillo mittatis, et omnia præmissa de cætero in Insulis illis teneri et firmitèr observari facietis in formâ prædictâ. In cujus rei testimonium has litteras nostras fieri fecimus patentes. Teste meipso apud Westmonasterium quinto decimo die Novembris, anno regni nostri septimo."

*The following Charter from Berry's History of Guernsey was also read.*

Grant of King Henry V. to his brother, the Duke of Bedford, of the Government and Regalities of the Islands.

" Anno 3 Hen. V.

" Rex omnibus ad quos &c., salutem. Sciatis quòd de gratiâ nostrâ speciali concessimus charissimo fratri nostro, Johanni Duci Bedford, in incrementum status sui, Insulas de Jersey, Guernsey, Sarq, et Aureney, unâ cum castris, dominiis, terris, tenementis, redditibus, servitiis, feodis militum, advocationibus abbatiarum, prioratuum, hospitalium, ecclesiarum, capellarum, cantariarum, et aliorum beneficiorum ecclesiasticorum quorumcunque, piscariis, forestis, boscis, parcis, chaceis, warrenis, officiis, eschaetis, forisfacturis, catallis fugitivorum et felonum, pratis, pascuis, pasturis, moriscis, wrecco maris, deodandis, prioratibus alienigenarum, regalitatibus, franchisiis, libertatibus, reversionibus, et aliis juribus, possessionibus, et commoditatibus quibuscunque nobis et hæredibus nostris aliqualiter pertinentibus sive spectantibus, infra Insulas prædictas; habend, eidem Duci, et hæredibus masculis de corpore suo procreatis, adeò liberè et integrè sicut Edwardus, nuper Dux Eborum, vel aliquis alius ea habuit, sive occupare solebat temporibus retroactis, et sicut nos ea habere deberemus, si ea in manibus nostris remanere deberent, absque aliquo nobis vel hæredibus nostris inde reddendo, aliquâ prerogativâ regiâ pro aliquâ aliâ tenurâ de nobis extra dictas Insulas tentâ, quæ ad dictas Insulas, castra, sive dominia, aliqualiter pertinere poterit, non obstante; eò quòd de valore dictarum Insularum, castrorum, dominiorum, et aliarum rerum supradictarum, sive de aliis concessionibus, per charissimum Dominum, et patrem nostrum Regem defunctum, sive per nos, eidem Johanni concessis, hìc expressa mentio facta non existet, secundum formam et effectum statuti inde edit., sive aliquibus aliis statutis sive ordinationibus quibuscunque in contrarium factis non obstantibus. In cujus, &c. Teste Rege apud Westmonasterium vicesimo septimo die Novembris. Per breve de privato sigillo."

3309. Do any of the grants which confirm the privileges of the Island refer specifically to the power of the Cour Royale to make ordinances?

3310. Mr. *De Havilland.* Yes. The Order in Council of the reign of Queen Elizabeth, in 1568.

3311. Can you refer the Commissioners to that particular part of the Order in Council which gives that authority?—The 4th article of the Order of 1568, is the following. " Item. That all grants and confirmations of privileges from the Queen's Majesty and her progenitors shall be always inviolably observed, maintained, and kept in force with the credit of the Bailiff and Jurats, to be obeyed in all their ordinances made and to be made for the good government, surety, and quietness of the said Isle, and that no officer or Minister of Justice be at any time hereafter resisted, impeached, or imprisoned for executing the sentences, ordinances, and constitutions aforesaid, but maintained and assisted according to the laws, usage, and ancient customs of the Isle." It is also mentioned in the Approbation des Loix.

3312. What is the title of that Order in Council of 1568?—It was in answer to petitions of complaint from this Island.

3313. Are the petitions set out?—No, not at length. It recites that complaints have been lately made to " the Lords, and others of Her Majesty's Privy Council, of divers troubles and quarrels."

3314. (To the *Procureur.*) The language of the 4th Article to which Colonel De Havilland has referred us is this: " That all grants and confirmations of privileges from the Queen's Majesty and her progenitors shall be always inviolably observed, maintained, and kept in force with the credit of the Bailiff and Jurats, to be obeyed in all their ordinances made and to be made for the good government, surety, and quietness of the said Isle." The Commissioners understand the inference intended is that the word " Ordinances " refers to the species of bye-law which the Court now claims the power of making?—Yes.

3315. How do you distinguish that from a decree or a direction in a particular case over which the Court might have jurisdiction?—The one we consider as being a Legislative Act, and the other a Judicial Act.

3316. What induces you to draw that distinction? Why do you think that the word "Ordinance" means more than a decree in a particular case?

3317. Mr. *Andros.* We infer it from the following words: that Ordinances are to be made "for the good government, surety, and quietness of the said Isle."

3318. The *Procureur.* We have three pleas in the year which we call the Chief Pleas. The Ordinances are made there.

3319. Do you ever now use the word "Ordonnance" for a decree in a particular case?—Never.

3320. Have you any trace of its having been so used?—No: I ought to add, that an Ordonnance is never passed without hearing the conclusions of the Crown lawyers.

3321. Is not that the case with reference to every other Acte?—The Crown lawyers never give their conclusions in civil cases.

3322. You have stated that those Ordinances could not pass without their being preceded by the conclusions of the Crown Officers; in that particular respect they would not differ, would they, from the form of proceeding in any particular criminal prosecution?—In certain criminal prosecutions the Crown lawyers, as public accusers, give their conclusions, and ask for a punishment. In this case they give their conclusions either for the passing of the law or against it.

3323. Mr. *De Havilland.* It should be said that the 4th Article arose from the circumstance of a constable having been put in prison for having obeyed an Ordinance of the Royal Court.

3324. Do you know what was the particular Ordinance?—No; it is not stated what particular Ordinance it was.

3325. A constable would hardly be carrying into effect so much a Legislative Act as a sentence of the Court?—It refers to either case.

3326. You think that this means a Legislative Ordinance of the Court?—Yes, an order taken in the Court of Chief Pleas. The Governor is always present there, or at least has been invited to come.

3327. The *Bailiff.* There are no Judicial Orders made by the Court of Chief Pleas.

3328. What is the Court of Chief Pleas?

3329. The *Procureur.* "The Ordinances are framed and promulgated in the Court of Chief Pleas, which is entirely legislative, and is held three times in a year, at which the Lieutenant Governor may be present, and where all the Crown vassals do homage to the King."

3330. The Court of Chief Pleas is not a Judicial Court, but a Legislative Court?—It is Legislative and not Judicial. "The Ordinances are passed after hearing Her Majesty's Law Officers, without whose conclusions or opinions no Ordinance can be passed."

3331. What are you reading from?—From the case of *Tupper and others against the Treasurer of the Hospital of St. Peter Port,* and *Tupper and others against the Constables of St. Peter Port.* There were two cases in which the same questions were submitted to Her Majesty, and they are reported in 3rd Knapp, p. 406, the last case in the book. I think I can express my meaning more clearly by reading from this case. "An Ordinance binds all the inhabitants. The Court, in its judicial capacity, cannot set it aside. On the contrary, it is bound to respect and enforce it; so much so, that from time immemorial, all the public functionaries, from the Lieutenant Governor to the assistant-constables inclusively, on admission to office, swear they will observe the Ordinances of the Royal Court, and cause them to be observed. No appeal is admitted from any Ordinance."

3332. Do you mean no appeal from the passing of the Ordinance?—On the passing of an Ordinance, I apprehend that a complaint may be made to the Privy Council, not a regular appeal.

3333. That would be incidental to every Legislative Act of the States, would it not?—Yes.

3334. Is there any appeal from a sentence given under an Ordinance?—No: there may be a complaint to the Privy Council against the Ordinance itself, but no appeal from a sentence under it. That is provided in the following Order in Council of October 9th, 1580, Art. 2nd. *Item.*—"Whereas they complain that they are restrained from appeals, it is ordered, that it shall be lawful for any of the inhabitants of that Isle, and all others, finding themselves grieved with any judicial decree, sentence, or judgment, made and given by the Bailiff and Jurats of that Isle, to appeal from the same to Her Majesty and the Lords of Her Privy Council, so as the same may be made at the time of such decree, sentence or judgment, or within fifteen days after notice of the same, provided that it shall not be lawful to appeal in any case criminal or of correction, nor from the execution of any order taken in the Court of Chief Pleas, nor in cries of Haro, nor from any matter moveable not exceeding the sum of 10*l.* sterling."

3335. Is the presence of any particular number of Jurats necessary for making an Ordinance?—Yes; the making and promulgation of an ordinance ought to take place in the Court of Chief Pleas, and the Bailiff and seven Jurats must be present. When an Ordinance is required between one Chief Pleas and another, there being only three Chief Pleas in the course of the year, the Bailiff and seven magistrates can pass an Ordinance:

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but, in that case, it must be what we call published, that is, it must be stuck up in different parts of the town.

3336. What is the technical term for that?—Affichée et publiée aux lieux ordinaires. An Ordinance passed at a regular Court of Chief Pleas does not require to be published or affichée. But as to one which is not passed at a regular Court of Chief Pleas, it is required—" Sera cette présente Ordonnance publiée et affichée aux lieux ordinaires afin que personne n'en prétende cause d'ignorance."

3337. Is there any other distinction between those two methods of making an Ordinance?—No.

3338. Are they sent to the Privy Council?—No. If the Commissioners will allow me, I can lend them a manuscript book with the Ordinances from, I believe, the beginning of the 16th century.

3339. Are they entered in the Greffier's book?—Yes.

3340. The *Bailiff.* If an Ordinance is made not in the Court of Chief Pleas it is usually made provisionally, to last till the next Chief Pleas only.

3341. Do you consider that essential?—It has been considered to be the proper course: whether essential or not I cannot pronounce an opinion upon, myself.

3342. What are the dates of holding Chief Pleas?—The *Procureur.* The first Monday after the 15th of January, the first Monday after Easter week, and the first Monday after the 29th of September.

3343. Is anything else done there except making Ordinances?—The Crown vassals do homage. Certain feudal proceedings take place. At one of the Chief Pleas they strike the files, to use a Scotch term, called " Affeurement des rentes." From the beginning of the 16th century up to the present time, the power of making Orders or Ordinances has been exercised by the Royal Court on every Chief Plea day, and on almost every subject.

3344. The *Bailiff.* I believe that 1521 is the earliest of which we have any record. What occurred before we do not know.

3345. I dare say you are aware that this power existed in Jersey up to 1771?—Yes.

3346. The *Procureur.* I have here (reading from the case of *Tupper* v. *the Treasurer of the Hospital of St. Peter Port*), " Of all the many ordinances which now regulate the Law proceedings, the Police, the Highways, the Harbours, the Vraic, the Importation and Exportation of Provisions, Lotteries, the Mode of Taxation, Settlement, as well as those which keep together and provide for the duties and discipline of that effective force, the Militia of the Island, there is not one but has been passed by the authority of the Royal Court."

3347. There is a passage in Colonel De Havilland's written evidence, which is an extract from the language of one of the old charters, that "such Ordinances are not to militate against any existing law or established custom of the country." Do you agree in that limitation?—I should say against any existing law; I would not go so far as to speak of custom.

3348. By " existing law " do you mean specific enactment?—Yes; written law. The Court are not authorized to change written laws.

3349. Among the written laws the Ordinances themselves would be enumerated?—Yes, in one sense of the word: but the Court have power to annul an Ordinance or substitute another; and they have always exercised that power.

3350. The *Bailiff.* I do not know that I can do better than give the Commissioners an instance which has occurred lately. It has been proposed to alter the law with respect to the admissibility of witnesses. The Court consider it cannot do that by an Ordinance alone upon its own authority, the objection to the admissibility being contained in Terrien, which is our law.

3351. In speaking of Terrien, do you not give the term written law rather a larger range than the Procureur does?—We look upon Terrien as being enacted. Terrien is held to be written law, so far as it is sanctioned by the Approbation des Loix in Queen Elizabeth's time; that gives validity to things which are Ordinances of French kings. I apprehend the Court has no power to repeal Terrien where it is in force, or any Order in Council, or any other law passed by an authority superior to that of the Court.

3352. Would you recognise a law of the States as superior to the law of the Court?—A law of the States acquires validity only by an Order in Council.

3353. Mr. *Carré.* When a new law is to be enacted, which cannot be accomplished by the Court alone, but requires the sanction of Her Majesty in Council, it has been the practice to submit it to the States for their approbation first, that is to say, before it goes to the Council.

3354. (To Mr. *Carré.*) Have the States any legislative authority whatever unless set in motion by the Court?—I conceive not.

3355. I understand you to tell us that, if the States passed a law, for instance, about party walls, prescribing that no houses should be built together without a wall of a certain thickness, they could not send that to the Privy Council without coming to the Court?—That has never been tried; but I conceive not.

3356. What are the functions of the States?—All financial concerns.

3357. Have they, except upon financial questions, no legislative power?—Properly not.

3358. Then the legislative power is in the Court of Chief Pleas?—Yes, to a certain extent.

3359. Exercised by the Bailiff and Jurats?—With the advice of the Crown Officers.

3360. Does the Bailiff vote?—He has the casting vote.

3361. In making an Ordinance?—Yes.

3362. The *Bailiff.* I apprehend that, if the States were to send up a legislative mea-

sure, which did not come from the Court, the question would arise before the Privy Council, whether it came from a competent authority. The question, I apprehend, would never arise in this Island.

3363. Why not?—Supposing the authority of the States to be null, yet, if that which they proposed was adopted by the Privy Council, it would become law by force of the Order of Council.

3364. The case would arise in this way: Supposing the States sent up a Bill to the Privy Council, and it was objected that it was not ripe for the cognizance of the Privy Council till it had gone through the Court?—The question would then arise before the Privy Council, not here.

3365. Of course there can be no doubt about what is the law in this Island?—I am not aware of any.

3366. All local laws, therefore, are made by the Jurats sitting in the Court of Chief Pleas?—By the Royal Court sitting in Chief Pleas.

3367. (To the *Procureur.*) Do the Procureur de la Reine and Contrôle vote upon every project of law?—They give no votes, but they give their conclusions upon every project of law.

3368. The Bailiff votes if the Court is equally divided, does he not?—Yes.

3369. The *Bailiff.* I apprehend, whenever the Court sits as a Court, the respective functions of the Bailiff and Jurats are the same.

3370. Mr. *Andros.* The Bailiff commences by stating his view of the subject, and recommends the Ordinance, if he thinks proper to do so, and then takes the opinions of the Jurats. If there is an equal number of Jurats on each side the Bailiff votes: but it is not meant that he has no voice unless the numbers are equal.

3371. (To the *Procureur.*) You say there is no appeal from anything done in pursuance of an Ordinance of the Court of Chief Pleas?—No.

3372. The *Bailiff.* I suppose the Commissioners mean this: If a person is brought before the Court for a breach of an Ordinance and condemned, there is no appeal from the condemnation.

3373. There is no appeal from any criminal sentence, is there?—No.

3374. This is what the Commissioners have collected from the evidence: that the Court themselves consider that, if a measure is not in violation of a written law, in the extended sense in which it has been explained, it becomes instantly law by enactment of the Court in Chief Pleas, provided the Privy Council do not interfere. But where it goes further than that, there you pass it through the States, and from the States to the Privy Council, and then it is not law till the Privy Council confirm it?—That is so. I do not apprehend it is in all cases necessary that it should go through the States.

3375. The States then have a legislative authority?—There is a certain legislative power vested in the States.

3376. Mr. *Andros.* The Court takes the initiative. They frame the law, and, when they have discussed it, they submit it to the States. If the States approve of it, it is sent to the Privy Council for confirmation. If the States reject it, it falls a dead letter to the ground.

3377. That applies only where the object is to change a written law?—A written law.

3378. Mr. *Utermarck, Contrôle de la Reine.* I do not think there is anything to prevent the Court of Chief Pleas passing an Ordinance, and submitting that Ordinance to the Privy Council, without its going through the States. They would not do it according to the modern practice; but there have been cases, where Ordinances have been sent immediately to the Privy Council without passing through the States. No Ordinances go to the Privy Council, unless they are considered to be an innovation.

3379. The *Procureur.* In an answer of the Court to the Privy Council, some years ago, the Court say they do not claim the power of changing any written law.

3380. Mr. *Jeremie.* That occurs in an answer transmitted by the Royal Court to the Privy Council the 10th of January, 1737, cited by the Appellants in *Tupper and Others against the Constable of St. Peter Port.* It is as follows,

"My Lords, we never pretended to be invested with the power and authority of making Laws, and it is what neither we nor our predecessors before us, ever assumed; but we beg leave to acquaint your Lordships, that this Court has always, as well by the nature of our constitution, as by virtue of sundry charters from the Crown, and other express Orders of Council, deemed itself authorized and empowered to make regulations, and set down such rules and methods as were necessary for enforcing and putting in due execution the Laws of the Island."

3381. Mr. *Henry Tupper* (Advocate). There appears to be a discrepancy, between the opinions of the Contrôle and some members of the Court, respecting the necessity of appealing to the States upon any alterations in the law, when the Court have framed an Ordinance which militates against the written Law. I agree with the Contrôle that it is not absolutely necessary to go to the States for that purpose, before the Royal Court can go to the Privy Council. It strikes me that the practice has originated from the Approbation des Loix. I refer especially to the 7th chapter of the 2nd book. "Nous n'avons accoustomé en cette Isle d'avoir gens de trois estats; mais toutes les affaires politiques se font par l'advis du Governeur Baillif et Jurez de la Cour Royalle après avoir par les Connestables connu le vouloir de la généralité du peuple." The Court of Chief Pleas have now strictly the power of passing all Ordinances, or what may be termed Bye Laws: and the "vouloir de la généralité" is sufficiently understood, in such matters of Bye Laws; for the constables are present, and the Governor is present, or has been invited to attend at the Court of Chief Pleas; and consequently the strict letter of the

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law is carried out by means of the forms which are observed at the Court of Chief Pleas. But, when a fundamental Law or a written Law is required to be changed, the Court never takes upon itself to be satisfied with the mere presence of the Constables in the Court of Chief Pleas, but it assembles the States, in order that the "vouloir de la généralité" may be thoroughly known: and, if the States were to reject the proposition, the Court would not proceed with it to the Privy Council, but it would be considered as cancelled.

3382. In what sense do you use the term Bye Law?—As a familiar illustration of the word Ordinance.

3383. It would appear that a great many laws must be included in "les affaires politiques," which are not variations of written laws?—I understand the expression to apply to all legislative enactments, which do not extend to the repeal of written laws.

3384. What do you take to be the reference to the Court of Chief Pleas in this 7th chapter of the Approbation des Loix?—At the time of the Approbation, the three bodies of the States were not in the habit of being assembled. They were, however, reorganized by the order of 1605. But the Court of Chief Pleas, I understand, never fell into desuetude at all.

3385. Do you understand the Governor, Bailiff, and Jurats mentioned in the 7th chapter to have constituted the Court of Chief Pleas?—Yes, with the constables, who were always assembled with them. When the States were in desuetude, the constables probably had some means by which they were enabled to bring to the cognizance of the Court the "vouloir de la généralité.

3386. Now we understand the opinion of the constables is not taken in the Court of Chief Pleas?—No. They are at liberty to make any observations they may think needful.

3387. By this 7th chapter the Governor, Bailiff, and Jurats are to act in "les affaires politiques," whatever they may be, after having, through the constables, obtained the consent of the generality of the people?—Before the Court is complete, at the present time, the constables are always called. They are always bound to attend, under a penalty: and, if they choose, they may make any observations in favour or disapproval of any proposition which may be submitted to the Court of Chief Pleas. They seldom do it; but they have the full right to do so.

3388. As matter of fact, are the constables present during the deliberations of the Court of Chief Pleas in making an Ordinance?—As matter of fact they are so.

3389. Colonel *De Havilland.* That is only by virtue of a recent Ordinance.

3390. Mr. *Tupper* (Advocate). I have no doubt they were always present in the manner referred to in the Approbation des loix. Very probably, the constables, being young men without experience, did not trouble themselves to come to the Chief Pleas at a time when the whole of their parishes might have an opportunity of expressing their opinion.

3391. In all cases the "vouloir de la généralite" would be collected at the Court of Chief Pleas?—Legally it is understood to be so.

3392. Then the difficulty is how came that not to be considered sufficient?—I understand it to have arisen at the time of the reconstitution of the States in 1605, when, all the parishes deliberating regularly at the States of Deliberation upon a proposition, they would have much better means of arriving at the knowledge of the "vouloir de la généralité," than they could possibly have in the Court of Chief Pleas, where the constables are not aware beforehand of the proposition to be discussed, and consequently cannot collect the opinions of their constituents.

3393. The difficulty is to understand how this passage assists us in distinguishing between the two classes of enactments; those which repeal a written law, and those which do not. Any hypothesis which may be obtained from this appears either to confine the enacting power to the Chief Pleas, or to throw it entirely upon the States.

3394. Mr. *MacCulloch.* There are one or two passages which may throw some light upon the subject. At that day certain Ordinances were evidently made by the Court. In the 10th chapter, 3rd Book, page 11. "Item, Pour la réparation des chemins la Justice en ordonne en Chefs Plaids, selon que la nécessité le requiert." This proves that the Court at that period made regulations or Ordinances for the repair of the roads.

3395. The *Bailiff.* My own opinion is that this 7th chapter has no relation to the enactment of Ordinances of any kind, "Nous n'avons accoustumés en cette Isle, d'avoir gens de trois estats, mais toutes les affaires politiques se font par l'advis du Gouverneur, Baillif, et Jurez de la Cour Royalle, après avoir par les connestables, connu le vouloir de la Généralité du peuple." That chapter relates to the state of the Island when there was no such body as the States. It refers to the chapter in Terrien, page 26, "Des gens des Trois Etats," and to the meetings of the States in Normandy for certain public purposes. We find, in the early history of the States, there were certain public purposes for which the States met; such, for instance, as to order that money should be levied for the defence of the Island when enemies were expected; purposes of a public administrative nature, which I apprehend to be "*les affaires politiques,*" not the making of laws. This chapter of the Approbation has reference to them, and says, we have no such three bodies of States, but, when any public business is transacted, this is done by the Governor, Bailiff and Jurats, after having heard what the constables have to say as to the wish of the inhabitants. Those are very nearly what was the principal part of the duty of the States, when they were actually established. There is nothing in the context which leads

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me to think that legislation was here spoken of. I mean by legislation, the making of Ordinances. At the time of the Approbation the Court then was and had been, in Chief Pleas, in the habit of making Ordinances. Without our inquiring, at present, wherein the Chief Pleas consisted, the Approbation itself (the very same instrument which uses these ambiguous expressions) refers clearly to several instances of Ordinances made by the Court in Chief Pleas as matter of then existing fact. There is the same recognition of Ordinances made by the Court of Chief Pleas before the Commissioners of 1607.

3396. Do you coincide with Mr. Tupper in thinking that the Governor, Bailiff, and Jurats of the Royal Court means the Court of Chief Pleas?—No. I think, whenever anything was to be done, those parties would assemble to take measures for the doing thereof. The Governor probably would have to summon the Bailiff and the Jurats to assemble to consider the measure which required to be passed.

3397. At the time the Approbation was written, we understand no States existed. Mr. Tupper appears to think this passage applies to the Court of Chief Pleas. We understand you to say you do not agree with him; but you think it applies to a meeting specially convened to consider "les affaires politiques," there being no States at the time in existence?—Either to a special or a general meeting not confined to the Court of Chief Pleas.

3400. How could there be a general meeting if there were no States?—I mean an ordinary meeting. It might be at an ordinary meeting of the Court, or it might be at a meeting of the persons here enumerated specially convened.

3401. Would that be in the character of a Court?—Yes, of a Court specially summoned, not of the Court as a judicial body. I think this does not refer to the Court of Chief Pleas at all; but it refers to those parties as members of the Royal Court.

3402. The *Procureur*. Perhaps what now takes place in one part of the Bailiwick may throw some light on that sentence. In Alderney, the Ordinances are passed by the Judge and the Jurats in Chief Pleas. At those Chief Pleas (and I believe from time immemorial it has been so) the Douzaine of Alderney is present: and, before they pass the Ordinance, they ask the advice of the Douzaine. It has always appeared to me that that might be the mode in which formerly, by the constables being present and by consulting them, they might know "le vouloir de la généralité du peuple." The constables being in the Court of Chief Pleas is a modern thing; but I understand that at the Court of Chief Pleas in Alderney the Douzaine is always there, and, before they pass an Ordinance, though the Judge and Jurats are not obliged to follow their advice, it has always been the custom to ask their advice.

3403. Mr. *Mac Culloch*. That is the way in which their States meetings are always held. The Douzaine is present by the constable. He has no vote; but he is always heard in the States on all affaires politiques.

3404. (To *the Bailiff*.) The Commissioners understood you to say that you consider this to apply to a meeting called of these parties, the Governor, Bailiff, and Jurats, to consult concerning certain "affaires politiques," meaning by "affaires politiques" something different from the passing of a law, some provision for the defence of the Island, or for the welfare of the Island, as distinguished from the making of a law?—Yes.

3405. Your attention has been called to the fact that Mr. Le Marchant, in his "*Remarques et Animadversions sur l'Approbation des Loix*," seems rather to view this meeting as a meeting for purely legislative purposes, and to complain that, by the usurpation of the Royal Court, the States had been ousted of their right to take part in legislative discussions. You were calling our attention to the circumstances under which those remarks were written, as showing that that was an improper interpretation put upon the Approbation des Loix; will you have the goodness to give your opinion upon that subject?—The Approbation is of a date when the States were not in use. The Approbation, therefore, in speaking of what was then in use, speaks of some authority other than that of the States. The remarks of Mr. Le Marchant upon the Approbation were written at a time when the States had been long in existence.

3406. The States were revived in 1605?—Yes; and he wrote somewhere about 1660. It is enough, however, to say that when he wrote the States had been long in existence. He applies the observations in the Approbation, which originally had reference to something else, to the state of things which he found, that is to say, to the powers in his time exercised by the States.

3407. (To the *Procureur*.) We understood from you that the constables were originally admitted to the Court of Chief Pleas by an Ordinance. Can you give us the date of the Ordinance?—I think it is about 1801 or 1802.

3408. (To Mr. *Tupper*, Advocate.) You think the constables, at all times, formed a part of the Court of Chief Pleas?—That is my impression.

3409. Have you any ancient Acte of Court to which you can refer as showing their right to be present in ancient times? It might have been an ancient custom fallen into desuetude and revived by an Ordinance?—What the Procureur has just said, as to the Constitution of Alderney, bears me out in that. I think the constables were always present at the Court of Chief Pleas, or should have been so; and Mr. Le Marchant's observations upon Terrien, I think, fully confirm my view. My impression is, that the constables are constitutionally bound to be present at the Court of Chief Pleas, but that it had grown into disuse, as they found themselves very often, from want of talent or experience, unable to compete with the Court, and therefore they ceased coming until the Court passed an Ordinance compelling them to be there.

3410. Can you refer us to any Acte of the Court of Chief Pleas in which the constables

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are spoken of as a constituent part of the Court?—My object in making the observation which I did some time ago, was not relative to the origin of the power of the Court of Chief Pleas to make Ordinances. It was to account for the practice which has arisen of consulting the States upon Ordinances which are passed, varying from the written law of the Island.

3411. The *Bailiff*. I may mention that I have a book before me which is the most ancient book, in which the proceedings of the Chief Pleas are entered regularly, and I find no entry of any constables being present.

3412. Mr. *Tupper* (Advocate). Even since the new Ordinance there is no reference made to the presence of the constables in the Chief Pleas; consequently that does not bear out your view.

3413. Mr. *Le Marchant*. The constables, by the last order, were desired to appear at the Chief Pleas for the purpose of knowing what Ordinances were passed.

3414. The *Bailiff*. I should understand that, if they had been constituent members of the Court, in order to give validity to any Acte, they would have been entered originally.

3415. The *Procureur*. I do not think the constables have ever been named as being present.

3416. The *Contrôle*. I wish to say one word upon this chapter of Mr. Le Marchant. It appears to me entirely to confirm the view which the Bailiff has taken, that this chapter of the Approbation has nothing to do with the Chief Pleas, but refers to the States. As I understand, Mr. Le Marchant was a very violent partizan, and had resigned the offices he held in consequence of his violent opinions. He appears in this chapter to allude to the way in which the States were composed. In page 55, he says, with respect to the election of Jurats, "De quoy aussi nonobstant ce que dit ici l'Approbation sont depuis demeurées des vestiges notables en l'élection des Jurés et du Prevost du Roy par les personnes des dits trois Estats, qui est une affaire politique, et d'autant de conséquence qu'aucune autre." That has nothing to do with the Chief Pleas whatever. "Mais ces autheurs de l'Approbation, ayant rejetté les deux autres Estats, se sont acquis une dictature perpétuelle, par laquelle ils ménagent à leur poste les privilèges, disposent des deniers publics, et imposent taxes sur les habitants quand bon leur semble." I understand, "ils ménagent à leur poste les privilèges," to refer to the electing what men they please to offices. The inference which Mr. Le Marchant wishes to draw is, that, from the way in which the States are conducted, the Bailiff and Jurats assume to do of their own authority what ought to be done by the people. "Et quant au vouloir ou consentement du peuple par la bouche des connestables, ce n'est plus q'une ombre sans corps de la puissance ancienne des dits estats; la Justice" (that is, La Cour Royale) "emportant à présent les affaires de haute lucte, les connestables n'osants ou ne gagnants rien de tergiverser, tellement que le plus souvent ils acquiescent à des choses, dont la généralité du peuple n'a pas seulement ouy parler. Car aussi lorsque les dits Connestables sont mandés pour adviser à telles affaires politiques, on ne leur fait point communément sçavoir le subject sur quoy on doit délibérer pour prendre et recuellir l'opinion des habitants de leurs paroisses, et venir ensuite la déclarer en Cour; et si, se doutants ou estant d'ailleurs informés du subject pour lequel ils sont appellés à telles assemblées, qui s'appellent encore (mais abusivement) Estats, ils entreprenoyent de faire assembler chascun leurs paroisses respectivement pour cognoistre le vouloir de la généralité du peuple, cela seroit interpreté par les dits Baillif et Jurés, à sédition et émotion populaire; et, néanmoins, sans cela il leur est impossible d'en informer les juges, si on le veut faire, sans commission, consentement, ou mesme sans cognoissance des dits habitants. Les dits Jurés n'ayant pas de coustume de donner temps aux dits connestable, après leur avoir donné une fois à cognoistre ès dits prétendus Estats le subject, dont on doit resoudre, pour assembler les dits habitants et sçavoir leur volonté, afin de venir pour une seconde fois en Cour mieux préparés à dire leur advis. Comment donc, cognoissent-ils le vouloir de la généralité du peuple, selon qu'ils alléguent en ce lieu par une couleur plausible tendant à faire croire que les compilateurs de l'Approbation ont esté soigneux de conserver les privilèges des dits habitants en ce point, qui suivant la chartre aux Normans ne peuvent estre taillés sans leur gré et consentement." That appears clearly to shew that Mr. Le Marchant's complaint was, that the Court assumed the right of carrying everything before the States, and that the constables came there without knowing what was going to be deliberated on.

3417. The *Bailiff*. I may state that, for many years, it has been the custom for the Bailiff to propose, in the Billet d'Etat, every question which is to be submitted to the States. I think that was by virtue of an Order in Council in the time of William Le Marchant. It appears not to have existed at the time of the publication of Mr. Thomas Le Marchant's work: at that time they were summoned without having any notice of the points to be discussed. With respect to the presence of the Constables in the Court of Chief Pleas, I have one or two further observations to make. In the year 1607 there were Commissioners sent to inquire into the state of things then, and complaints were made; one of them is at page 66 of the book entitled "Documens relatifs à l'Ile de Guernesey." It is prayed in the 13th Item "That the Constables may have their voice at the Chief Pleas, at the taxation of rents and wine." The taxation of rents, the Commissioners have heard spoken of. They will find it was usual at the Chief Pleas to fix the price of wine. "That the Constables may have their voice at the Chief Pleas, at the taxation of rents and wine, and others such public affairs; and that for the time to come, they may understand in what causes they ought to have voice; and that the Constables do not

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take upon them anything of importanee without the advice of their parishioners." That is the prayer of the people; to which the answer of the Commissioners is: "It is shewed unto us, as well by Charter as also by ancient custom, that the Bailiff and Jurats have had the taxation of the rents and wine:" that being an order of the Chief Pleas; "and likewise the ordering of all public affairs for the most part:" that I take to be the management of Les affaires politiques; "especially such as concern the execution of justice, and therefore we leave the same to be used and ordered by them according to their Charters and ancient customs." Then, as to Constables, it goes on: "And touching the Constables, because by their offices they are subject to the Governor and to the said Bailiff and Jurats, and ought not to take upon them either voice in the elections of officers, or to do any other thing touching the execution of their offices, without commandment or order first sent to them from the Governor or from the Bailiff and Jurats on that behalf. We therefore leave the said Constables to be ordered by them in such sort as to their several callings and authorities respectively in all former times appertained." Here is the order, which we have heard of, by which the Constables are now required to be present. It is at the Chefs Plaids after Christmas, 19th January, 1801. "Monsr. Le Baillif ayant représenté à la Cour qu'il seroit du bien public et tendroit à faciliter la promulgation et exécution des Loix et Ordonnances Politiques de cette Isle si l'un des connétables de chacune paroisse assistoit à la terme des Chefs Plaids de la Cour Royale, la Cour sur ce, ouie la conclusion des Officiers du Roi, a ordonné et ordonne, qu' à l'avenir l'un des connétables de chacune Paroisse se rendra et sera présent à la terme de chacun des dits Chefs Plaids, et qu' après l'évocation faite de ceux qui doivent réponse aux dits Chefs Plaids le Greffier du Roi évoquera les connétables de chaque paroisse, et que, faute à l'un d' eux de chacune des dites paroisses de répondre, les connétables de la dite paroisse seront sujets à, et payeront, £10 Tournois d' amende, sans préjudice au droit d'action que l'un des dits connétables pourroit avoir à l'encontre de l'autre; et seront les dits connétables présents tenus rester jusqu' à la levée des dits Chefs Plaids, afin d' informer leurs collègues des ordonnances qui auront pu y passer sur même peine de £10 Tournois d'amende, payable par chaque délinquant. Et seront les dites amendes applicable à Sa Majesté."

3418. Mr. *Tupper* (Advocate). If I infer rightly from the Bailiff's statement as to the regulations of the Commissioners, he gives a different interpretation to the word "*voice*" than I think is the proper one. I understand by "*voice*" distinctly "*vote*;" it is translated from the French "voix." It was the right of vote which the Constables prayed for, not the right of expressing their opinion. "That the Constables may have their *voice* at the Chief Pleas." I think that is borne out by reading the determination of the Commissioners in 1607. In the first place, the petition would infer that the Constables were present at the Chief Pleas even then. "It is shewed us," say the Commissioners, "as well by Charter as also by ancient custom, that the Bailiff and Jurats have had the taxation of the rents and wine, and likewise the ordering of all public affairs for the most part, especially such as concern the execution of justice." That is, the Bailiff and Jurats are there stated to have had the taxing of wine. It would appear, by the word "*voice*," that it was meant that the Constables should have a participation in that authority; not merely the expression of an opinion, but a participation in the authority. And they go on, "and therefore we leave the same to be used and ordered by them according to their Charters and ancient customs." That is, that they shall have the ordering of such matters. It does not decide that the Constables had not, previously to that, the power of voice; I mean voice in the sense of the right of expressing their opinion; but the Constables were then endeavouring through the public to obtain an extension of their power, which was denied to them.

3419. (To Mr. *MacCulloch.*) You were making a statement to the Commissioners, showing that the Court of Chief Pleas had exercised the power of making Ordinances?—I was going on to shew that, at the period of the Approbation des Lois, the Court did exercise the power of making Ordinances in Chief Pleas. I was about to refer the Commissioners to the 10th Chapter of the 3rd Book of Terrien, which speaks of Sergens et autres Officiers Extraordinaires. From that it appears that the Sergens in Normandy had something to do with the repairing of the roads. The Approbation says, "*Item.* Pour la réparation des Chemins la Justice en Ordonne en Chefs Plaids, selon que la nécessité le requiert." That proves that there were Ordinances in existence, made by the Court with regard to the repair of the roads, which would be found in point of fact to exist in the Greffe among the earliest records. In the 4th Book, 19 Chapter of Terrien, which is "Des Boulengers et du poix que le pain blanc doit peser." We find the Approbation has this, "Ces choses sont ordonnées en la Cour des Chefs Plaids selon que le forment vaut en cette Ile, et selon que la nécessité le requiert." It is shown therefore that they made Ordinances in respect to the assize of bread. In the 24th Chapter of the same Book of Terrien, "Des Bordeaux, Dances, Masques et Jeux défendus," the Approbation says "Les dances sont défendues en cette Isle par Ordonnance faite es Chefs Plaids." The whole of the 14th Book, or a considerable portion of it, is said to be regulated in the same way "Pour les eaux et estangs contenus au quatorsiesme livre il y a ordre posé par les Chefs Plaids." There is also another reference which I omitted, the 45th chapter of the 12th Book of Terrien, respecting shooting. The Approbation says "Au lieu du quarante-cinquiesme chapitre pour la Chasse, nous usons de l'Estente du Roy et Ordre des Chefs Plaids." Perhaps I need not take up your time by going through the regulations of the Commissioners in 1607: but you will find that there were several complaints addressed to the Commissioners against particular Ordinances made by the Court en Chefs Plaids.

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3420. (To Mr. *Tupper*.) The Order in Council of the 19th of June, 1844, was referred to by you as showing that it recognized the general power of making Ordinances?—Yes.

3421. The *Bailiff*. There are some further proceedings of the Commissioners in 1607, which throw some light upon the constitution of the Island, as respects the making of Ordinances, at page 17 of the Book before referred to. They complain that "Sir Thomas Leighton hath heretofore compelled the inhabitants of the Isle to ship themselves, to make war against pirates, to the great danger of their persons, being some of them altogether unmeet for such actions and none bound to the said services. They desire that henceforth the Governor take not that authority upon him to constrain any one to serve out of the Isle or Castle, and, whensoever he shall command any services, that it be for the defence only of the said places against the enemy. In regard also that the Governor hath, heretofore, commanded very chargeable fortifications in the Isle, which prove idle and needless, they desire that, hereafter, no fortifications be enjoined upon the people, by the Governor's own authority, without the advice and consent of the States of the Isle;" this being soon after the States were re-established. The answer is: "We think the request in these two articles mentioned to be reasonable, and therefore do order that the Governor shall not command men to ship themselves to make war against pirates, or command the inhabitants to build any chargeable fortifications in the Isle, without advice thereof first had with the Bailiff and Jurats, or by commandment given from the Lords of His Majesty's most Honourable Privy Council; and, this we rather order, for that we find the Isle to be already so well fortified, in all parts, as that we hope there will never be need of any new fortifications, so that the old be kept in sufficient reparation." Then there is a passage relative to Vreck, which is sea weed, at page 50 of the same Book. "They do humbly pray that, it be ordered by His Majesty's Commissioners that it be lawful for them, for the time to come, to go to gather Vreck upon the flat rock, and other places hard by, without they be in any ways hindered." The answer is: "Because we find that the Vreck is so beneficial and necessary for the whole Island, as that the inhabitants cannot have any manner of grain or corn, without they first bestow and spread the same upon their grounds; and for that we are informed that the Bailiff and Jurats have usually set down such orders, as were, from time to time, most convenient for the inhabitants touching the same, who, in our opinions, do best understand what is fit to be done in those things which concern the common good of the island; we do therefore require that all such orders as they shall set down touching the gathering of the Vreck, either upon the said flat rocks or elsewhere, shall be duly kept and observed." That is, as I understand it, the Court of Chief Pleas have hitherto regulated the taking of Vreck: and our decision is that any orders, the Court of Chief Pleas may hereafter make, may be obeyed. And by looking at the old records you will find continual regulations respecting the Vreck passed at the Court of Chief Pleas.

3422. That shows the power of the Court of Chief Pleas to make such Orders?—Yes. Then again we find at page 63: "*Item*. They humbly pray that they may have liberty to sell wine, beer, cider, without giving any caution or craving any leave, as they have had in former times." The answer is "The disposition and ordering of these things of ancient and immemorable time hath belonged to the Bailiff and Jurats, and therefore we leave the same by them to be ordered as in all former times hath been accustomed." I have already read the passage which refers to their having a voice in the taxation of rents and wine.

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John De Havilland Utermarck, Esq., Contrôle de la Reine.

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3423. Before quite dismissing this question of the Court of Chief Pleas and the mode of making Ordinances by that Court, the Commissioners are anxious to know, whether, when Ordinances are proposed, the Constable of any parish or any individual has an opportunity of being heard against the Ordinance?—A great many Ordinances of the Court are publicly known before they are proposed in the Court of Chief Pleas; and, in practice, it is not unusual for individuals to employ Counsel against the enactments about to be made. At the Court of Chief Pleas itself, supposing an Ordinance to come there for the first time, that Ordinance is, generally or in fact universally, proposed by the Crown Officers. Upon that, before the opinions of the Court are taken, the Constables make any observations they please; and also, I conceive, they have the right to ask a certain time to put observations before the Court, either by themselves or by Counsel. Suppose an Ordinance to have been passed, it is also legal to present a Requête to the Court against that Ordinance; and any person presenting that Requête has the means of being heard by Counsel.

3424. A Requête against the Ordinance which has been passed?—Either a Requête against the Ordinance which has been passed, or a Requête to prevent an Ordinance. I can cite a modern case of an Ordinance for the keeping of gunpowder, which the Court provisionally enacted till the next Court of Chief Pleas. On the day of Chief Pleas, Mr. Advocate Falla was heard on the part of certain individuals proposing certain modifications in this Ordinance, and desiring that it should be enacted in a different form generally. In consequence of which the Court appointed a day for taking the different points mentioned into consideration. It is also usual, in the case of any important Ordinance, particularly those involving any subsequent change in the law, that is, those which would require confirmation by Her Majesty in Council, for the Court, instead of proceeding in Chief Pleas directly to make an Ordinance, to appoint a committee to examine how the Ordinance

shall be passed; and that committee, named at one Chief Pleas, generally make their report at the next Chief Pleas; and that report is ordered to be printed, or at least to be lodged at the Greffe Office. And then the parties have the means of being heard against it before it is finally passed even by the Court.

3425. Would not an Ordinance of that kind go before the States?—In practice now it would. It might do so or not. One or two years ago, it was proposed to consolidate all the Ordinances regarding the harbours in this Island; and then the Court, considering the importance of the subject, ordered a projet of the Ordinance to be printed, and copies of it were sent round to all the different parishes, some months before it was finally passed; by which means any parties then having any objections to urge would have an opportunity of being heard.

3426. The *Bailiff.* There were two distinct parties, who appeared before the Court, in some shape or other, and stated their objections; all of which were taken into consideration, and many alterations made.

3427. Are the Commissioners right in supposing that, when an Ordinance is considered by the Court of Chief Pleas to be of great importance, it is introduced, in the shape of a projet, to give the parties an opportunity of objecting?—The Ordinances of the harbour and of pilots were a consolidation of all the Ordinances existing upon those points, and they were introduced as projets. But, generally speaking, the form is to name a committee, who prepare a report embodying the projet, which is lodged at the Greffe Office, or printed.

3428. In cases of great importance, is there any means of giving notice of the Ordinance before it is brought on, so as to enable the parties interested to oppose it?—Yes.

3429. And, in cases of less importance, are the constables the persons that have a right to oppose, and who do, in fact, exercise that right?—Yes.

3430. Are there frequent instances of the constables exercising that right?—I cannot say that there are frequent instances.

3431. There was an instance with regard to the width of wheels of carts, was there not?—Yes; parties were heard upon that. In that case I am not aware whether the constables made any observations. Parties were regularly heard before the Court upon that Ordinance, and about fishing, also, at particular places and at particular times of the year.

3432. Mr. *Dobrée.* I remember, in the case of the Ordinance regulating the number of days and the localities in which persons might draw for small fish here, two constables rose the moment the Ordinance was read, and said it would interfere considerably with their daily avocations; and they said it would be very desirable to alter it. To the best of my recollection the Ordinance was modified in conformity with the suggestions of those individuals.

3433. (To the *Contrôle.*) Are many of such Ordinances passed in the course of a year?—In some years there are many.

3434. Perhaps there is never any Session of Chief Pleas without there being some?—I think there are several without.

3435. Are the Commissioners right in supposing that the legislative functions of the Court are very considerable?—They are exercised continually. I should not say that they were very considerable. Of late years a great deal has been done in the consolidation of old Ordinances, which were scattered among the records. For instance, in reference to roads, there were more than one hundred Ordinances, which were scattered among the records; and those were gathered into one. The same thing has been done with regard to harbours, to pilots, and several other subjects: and that has occupied the Court of Chief Pleas lately.

3436. The Commissioners heard some suggestion of a law for the purpose of enabling private property to be dedicated to public purposes?—That was first proposed before the Court of Chief Pleas. Upon that a committee was named, who prepared the Ordinance which was submitted to the Court of Chief Pleas afterwards, having been previously lodged at the Greffe that the public might obtain notice of it, and having been previously printed in the Official Gazette of the island. After it had been finally adopted by the Court of Chief Pleas, it was brought before the States, and, having been confirmed by the States, was sent to Her Majesty in Council, where it still remains.

3437. The Procureur told us that there were two law officers, the Procureur and the Contrôle; can you tell us whether their duties are precisely the same?—Precisely. There is no distinction whatever between them, except that the Procureur has a vote in the States and the Contrôle has not; he has the right of speaking in the States, but has no vote. In their capacity as members of the Court they are precisely the same.

3438. Are they always both of them heard in every criminal question?—When they are present they are always both of them heard.

3439. Will you be kind enough to describe the functions they have to perform? The Commissioners understand, from your answers and those of the Procureur, that they form a constituent part of the Criminal Court.—Yes, they do.

3440. Will you state their peculiar functions?—Any offence committed, for which a constable is called, must be reported to one of them, as well as to the Bailiff, by the constable; and, in the event of the constable having apprehended a person charged with such offence, he is bound to give notice to them, and to the Bailiff, within twenty four hours of the person being imprisoned. They then, jointly with the Bailiff, become responsible for the further detention of such person. The constable's responsibility is

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then discharged: and, upon communication with the Bailiff, they decide whether the person shall be kept in prison till the next sitting of the Court, or shall be liberated and warned to attend the Court.

3441. You say, jointly with the Bailiff they become responsible for his detention, and decide whether he shall be kept in prison or warned to attend. Is that done at some private meeting with the Bailiff, or is any public meeting held?—No public meeting whatever. It is done upon private conference with the Bailiff, wherever they can find him.

3442. Is it necessary that both the Crown Officers should be present?—No; and in ordinary cases it is very often done by one. In cases of any great importance they would both be present of course.

3443. That is, the Bailiff and one of the Law Officers are capable of deciding whether a person shall be detained or merely warned to attend?—Certainly.

3444. The *Bailiff*. In ordinary cases, frequently the Bailiff does not see either of the Crown Officers. He very often gives only his own opinion. It is only when he sees any doubt about it he thinks it necessary to consult with them.

3445. The Bailiff would sometimes act alone; but the Law Officers would not act without consulting the Bailiff?

3446. The *Contrôle*. They do sometimes act without consulting the Bailiff. If it is a very clear case, they will sometimes save the constable the trouble of waiting upon the Bailiff, by saying that they will report it to the Bailiff themselves.

3447. Would what you say apply to where they direct the party to be summoned, as well as where they direct the party to be imprisoned?—It would in some cases. Supposing a constable were to come to one of the Crown Officers, and say that he had put a man in prison upon a charge which appeared very trifling, and supposing the person charged had been a man residing in the Island a certain time, and a person bearing a good character, the Crown Officer would think himself justified in recommending the constable to liberate him at once, and inform the Bailiff of it.

3448. In a more doubtful case you would consult the Bailiff?—Yes.

3449. Are the Commissioners right in supposing that, legally, the Crown Officer has that discretion?—No: I understand, not legally. I understand that, legally, the constable must report to the Bailiff and to the Crown Officers; I may add that the constable is bound to do so by his oath of office. Before I come to particularize the duties of the Crown Officers in Court, I would state that they are also bound to patronize all causes for guardianships, and all cases where the interests of minors or persons incapacitated from taking charge of their own property are concerned; that all cases entered by an informer, and all suits entered for the infringement of ordinances, must be entered by one of them.

3450. Those would be proceedings for penalties?—Yes.

3451. The Commissioners wish you to confine your answers to the duties of the Law Officers with regard to matters which are in themselves purely criminal—With regard to Ordinances, all Ordinances of the Court inflict penalties for infringements of the clauses contained in them; and all actions entered for penalties must be patronized by one of the Crown Officers, either in his own name or in the name of the informer; that is, "A. B. et les Officiers de la Reine joints." There is also a particular form of action in what are called "Causes mixtes," which are subdivided into "Causes en adjonction," Cases for assault or slander, in which a party claims damages. Those cases must also be patronized by one of the Law Officers for the plaintiff; and the first summons sent is in the name of the party alone. If the action is admitted, or if the defendant makes a default and does not appear upon the first proceedings, in either case, an "adjonction des Officiers de la Reine" is ordered, and the subsequent proceedings are in the name of the plaintiff and the "Officier de la Reine joints." If the defendant appears to the suit and defends it, he is bound to employ the other Crown Officer. The plaintiff and the defendant may also have an additional counsel. I may add that this proceeding is one which is already alluded to in my answers, and which, I believe, is considered by most people as objectionable and requiring some change. In cases of Clameur de Haro, et Nouvelle Dessaisine also the Crown Officers are engaged.

3452. All suits for the infringement of Ordinances must be patronized by the Procureur?—Yes.

3453. Does their being patronized by him imply their being carried on in his name?—No. Summonses are sent by one of the Crown Officers, either in his own name alone, or in his name and the name of the informer jointly.

3454. What is the meaning of "patronized" by the Crown Officer?—That he must grant summonses and must appear in Court to prosecute upon them.

3458. In a case where part of the penalty goes to the informer, would that be a cause mixte?—No.

3459. In a proceeding for penalties, is the defendant obliged to retain the other Crown Officer?—No.

3460. What are the functions of the Crown Officers in the Criminal Court?—When a prisoner is brought before the Court, the constable gives in the names of the witnesses to support the charge. That is before La Cour Ordinaire, composed of the Bailiff, two or more Jurats, the Crown officers, the Greffier, the Sergeant, and the Prevôt. The constable gives the names of the witnesses in support of the charge to the Law officers, and also the nature of the charge.

3461. At what time is this?—In the Court itself, In cases where a person has been apprehended, the Crown officers know the circumstances before; but the practice is for the constable to give a list of the witnesses to the Crown officers.

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3462. Is that in all cases?—Yes; the constable warns all the witnesses he thinks necessary for the support of the charge, and a list of any which the prisoner may have given him, to attend at the Court. He then gives a list of the whole on both sides to the Crown officers, with the nature of the charge. The Crown officers then lay before the Court their opinion as to whether the case is of a nature to be tried summarily, or to be sent to trial; and the Court decides whether it shall be taken summarily or not. Supposing it to be taken summarily, the charge is immediately gone into in the Public Court. The Crown officer examines each witness; first, those in support of the charge; and, if the prisoner has no counsel, he puts any questions to the witness that may be suggested by the prisoner, having asked the prisoner whether he has any question which he wishes to be put.

3463. In a summary proceeding, are the witnesses heard by the prisoner?—Yes; and he may employ counsel. Supposing him to employ counsel, the counsel conducts his defence entirely. Supposing he does not employ counsel, the Crown officer, after examining the witnesses in support of the charge, puts any questions the prisoner may wish put to the witnesses; or the prisoner may put them himself; and so the witnesses are gone through. Then the prisoner's witnesses are called.

3464. Does the Crown officer advise the prisoner?—No; after having examined the witnesses in chief, he says to the prisoner, "Now, if there are any questions you wish to put, this is your opportunity to do so; or I will put them for you."

3465. You say the Court decides whether the case shall be taken summarily or not?—Yes.

3466. Who decides whether a person shall be prosecuted or not?—That is the prosecution, if it is a summary case.

3467. The Commissioners understand the Court decide whether it is a case in which they will exercise their summary jurisdiction, or whether it shall be sent to a higher tribunal: but they are desirous of knowing, who has the right of instituting criminal proceedings; is it the Law officers of the Crown or the Court?—The constables bring every case before the Court.

3468. Then the next question is whether it shall be prosecuted or not?—Yes; if the constable states a case, which the Court thinks ought not to be prosecuted, they would say so.

3469. Do the Law officers of the Crown decide whether a case shall be prosecuted or not?—No.

3470. Would the Crown officers have the power, upon having received the Report of the constable, to say, "We do not think it advisable to proceed in this case," and to abstain from proceeding?—Supposing a constable to come with any charge, manifestly ridiculous, I suppose they would take the responsibility upon themselves. Suppose there were any doubt, they would confer with the Bailiff; and he would take it upon his responsibility, or confer with the Court.

3471. The *Bailiff.* I apprehend the Crown officer would have no right to stop it, supposing an individual made a complaint.

3472. The *Contrôle.* Supposing a complaint to be made to a constable by any party, it must come before the Court. When I say "complaint," supposing a person were to go to a constable with a civil charge, the constable would not undertake it: but, supposing he goes to the constable with any complaint bearing the nature of a criminal proceeding, he would bring it before the Court.

3473. Supposing the constable does not do so?—Then he is liable to be brought before the Court for not having done his duty: the party complains to the Court itself.

3474. When the Commissioners were present yesterday in Court, a person made a complaint, and said, he had complained to the constable. Upon his making a complaint to the Court, the Court said he must go back to the constable. What is such a person's remedy against a constable neglecting to perform his duty?—His remedy is to complain to the Court of the constable's having refused to entertain his case.

3475. Has the constable any discretion whether he will entertain the case or not?—He must bring every case before the Court which partakes of the nature of a criminal charge. If he does not, the Court will order the constable to do so. In the case mentioned of yesterday, the order of the Court was that the constable should bring the case before the Court. Supposing the person complaining of the constable fails in proving to the Court that the case does partake of the nature of a criminal charge, of course the Court will judge accordingly.

3476. That does not get rid of the question, What is the remedy of the party.—He must complain to the Court.

3477. How does he bring his complaint before the Court?—By bringing it before the Court at any time he pleases.

3478. It appeared, yesterday, that the party complaining to the Court was referred back to the constable.—He was heard before the Court; and the constable was present; had the constable not been present, the Court would have directed the charge to be brought before them.

3479. The *Bailiff.* The charge yesterday was the original charge against the offending parties, and not a complaint against the constable.

3480. Supposing a person makes a complaint to a constable, and the constable refuses to proceed upon the complaint, the party then makes a complaint to the Court, stating those facts, would he be referred back to the constable again?

3481. The *Contrôle.* The Court would then request the Crown Officers to write to the constable, stating that such a complaint had been made; and, if they were of opinion

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there had been any gross violation of his duty on the part of the constable, they would order the constable to appear before them. If it were matter of carelessness, or matter of doubt, they would request the Crown Officers to write to the constable, stating that such and such a person had complained to the Court, and requiring him to bring the case forward.

3482. Is there any other mode of bringing a case before the Court except through a constable?—No; not in the first instance.

3483. Have the Crown Officers the power to institute proceedings upon the complaint of an individual?—No; supposing a person to come to the Crown officer, and to say, "I complain of A. B.; I have been to the constable, and he refuses to interfere." Upon that, the Crown Officers would write an order to the constable telling him to bring the party before the Court. Supposing the party came directly to the Court to complain of the constable not having taken up his case, the Court would then either send the Prevôt, or order the Crown Officers to write a note to the constable directing him to take immediate steps to bring the matter before the Court.

3484. Is there any other mode of bringing a criminal charge before the Court in Guernsey but through the constable?—No.

3485. Two questions arise in case of the default of a constable; one is his own criminality in not bringing the complaint forward, the other is the right of the party complaining. Supposing the constable is obstinate, has the party the right of getting his case before the Court in any other way?—Then the Court would order another constable to bring it forward.

3486. There is not known to your Law any criminal process not passing through the constable?—No.

3487. There is no mode of setting a criminal case in motion, but through the constable?—No. But the Commissioners must understand that the constables are bound by their oath to obey the orders given them by the Court, the Bailiff, and the Crown officers.

3488. The Commissioners understand there are two constables, and four assistants.—Yes, in the town parish, independently of special constables; and there are two constables in each country parish.

3489. Are the constable's assistants capable of making a charge also?—Yes.

3490. The *Bailiff*. Every constable of every parish has power to act throughout the Island.

3491. The *Contrôle*. The power of the assistants also extends throughout the Island.

3492. When a party is brought before the Court, who decides whether he shall be prosecuted or not?—According to the nature of the charge, the Court decide whether it is of a criminal nature or not; if it is of a criminal nature, he is always prosecuted.

3493. He is always prosecuted if it is necessary to prosecute him: but who decides whether it is necessary or not?—The Court decide that. If the Court think the charge, as presented to them by the constable, is not of a nature to warrant any criminal proceeding, they discharge the case at once. If it is of such a nature, they go into it in one of the two forms, either summarily, or by a regular trial. Also in summary cases, very often, a discretion arises whether it is properly within the cognizance of the Court of Police, or whether it ought to be a cause mixte, such as cases of assault.

3494. By the Court of Police, you mean the Cour Ordinaire exercising summary jurisdiction?—Yes; an option is very often given to a party complaining of an assault. He is told that, if his complaint is heard in the Police Court, he will not have any damages; if, on the contrary, he chooses to bring his case en adjonction, by the proceeding I mentioned just now, if it is an object with him to obtain damages, he may bring it in that form before the Court.

3495. Are the Commissioners right in saying that the Procureur and Contrôle cannot institute a criminal proceeding but by order of the Court?—Exactly so.

3496. Has the Procureur or the Contrôle power to institute criminal proceedings without the sanction of the Court?—No.

3497. They must have the order of the Court to make the acte d'accusation?—Exactly so; and, in summary cases, the Court must have decided that it is a case for their own cognizance in that form.

3498. Who is the counsel for the crown in those cases?—The two Crown Officers.

3499. Who draws the acte d'accusation?—The acte d'accusation is framed by the Court in point of law. In point of fact, it is framed by the Crown Officers and the Court jointly. Legally speaking, the Crown Officers only become parties to a cause after the acte d'accusation is framed. In summary cases, however, there is no acte d'accusation at all. There is a difference in that point of view between summary cases and cases for trial.

3500. The Commissioners understand that the acte d'accusation is framed by the Court and the Crown Officers?—Yes.

3501. Who decides if the Crown Officers and the Court differ?—The Court legally frame it; but, in practice, they have the Crown officers with them. It is legally the act of the Court; the name of the Crown officer is not contained in the acte d'accusation. It is at the end of that acte these words run: "Il est ordonné que les Officiers de la Reine informeront contre lui:" and it is only from that moment the prosecution is in the hands of the Crown Officers.

3502. Is there any intermediate officer, in Guernsey, filling the office of public prosecutor, standing between the person who makes the charge and the Court which has to decide it?—No, not in that stage of the proceedings.

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3503. The *Bailiff.* The Acte of Court, upon which a person is committed, must be taken, speaking as an English Lawyer, to combine the two acts of the committal by the magistrate, and the finding of the bill by the Grand Jury.

3504. The *Contrôle.* My own notion is that, supposing the Crown officers to insist upon a prosecution, I should conceive the Court would, in all cases, grant it.

3505. Would, or must?—I should say must. I should suppose, if the Crown Officers stated to the Court that, as representing the interests of the Crown, they thought it their duty to insist upon the prosecution being brought forward, the Court would, in all cases, allow them to do so.

3506. Is there any mode by which the Crown Officers could compel the Court to do so?—No; there would be no compulsion; it would not be as a matter of right.

3507. All you mean is, that you consider it would be a very violent exercise of power in the Court to refuse?—Yes; that is what I mean.

3508. The spirit of your jurisprudence appears to be that the Crown officers should not appear as an adverse party to the prisoner, but rather as Amici Curiæ?—Yes. When the prisoner is committed, the Court becomes independent of the Crown Officers entirely; and they each have totally different functions to perform from that moment. It is only as far as the committal that they are united. From that point the whole responsibility of the prosecution rests with the Crown Officers.

3509. The *Bailiff.* Exactly as in England, where a true bill has been found by a jury.

The *Contrôle.* From that moment the whole responsibility of the prosecution rests with the two Crown Officers.

3510. In the case of libel, would the question, whether it shall be brought forward or not, depend on putting the libel in the hands of the constable?—With regard to that particular case, it might be brought forward by the Crown Officers themselves without the constable.

3511. Suppose a libel on this Court of Justice, or a libel upon the Militia?—There are cases in which those libels have been brought officially before the Court by the Crown Officers.

3512. You mean that a libel upon public bodies would be officially brought before the Court by the Crown Officers?—Yes: the party accused would then be warned by the constable in the ordinary course.

3513. Would there be any discretion in the Court in that case as to proceeding or not?—Yes; the Court would have just the same discretion in all cases. The Crown Officers would bring the matter officially before the Court; the Court would then decide whether it should be prosecuted or not.

3514. In that case, according to the theory you have pointed out, when the Crown Officers brought the case officially before the Court, they would be performing the duties of advisers of the Court, whether what they themselves requested should be granted?—Yes; and it would be optional with the Court to refuse their request.

3515. The Court would be the Bailiff, or the Lieutenant Bailiff, and, at least, two Jurats?—Two, or more, Jurats: not necessarily more than two.

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*Robert MacCulloch,* Esq. examined.

RobertMacCulloch, Esq.

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3516. We have been told by the Procureur de la Reine that there are altogether six advocates in the Court when the Court is full; but that there are not that number now practising. By whom are the advocates of the Court appointed?—By the Court.

3517. By the body of the Court, or by the Bailiff alone?—By the body of the Court.

3518. Is there any particular examination necessary; or what is the form of appointment?—There is no examination necessary.

3519. Gentlemen do, of course, undergo a course of legal study before being admitted as advocates?—They do.

3520. Is that usually pursued in France, or in England, or in this island?—Generally both in Guernsey and France.

3521. Do you mean by attending some of the lectures given on law, in the French universities?—Yes. In my case, I was about fourteen years of age when I went as a clerk to an advocate here, and remained four or five years. After that, I spent about a twelvemonth in France, at Caen, attended the lectures there, and frequented the public libraries, where there were a quantity of books on the ancient Norman Law, the general principles of which I studied. On my return, I attended the office of the Procureur de la Reine, about six or eight months. I believe that is about the course of study pursued by most of my colleagues.

3522. Is it obligatory upon an advocate to plead, or can he refuse to undertake a criminal cause?—I consider, with respect to criminal cases, he is bound to undertake every case. In civil cases, there is a limitation in his oath. In practice, it is considered that an advocate is bound to undertake all criminal cases.

3523. The Greffier is one of the officers of the Court, is he not?—Yes.

3524. Besides the Greffier, who are the other officers of the Court?—The Prevôt is one.

3525. Does the Prevôt exercise his office by deputy, or not?—At present the Prevôt does scarcely anything himself: he has two deputies. From very early times the Prevôt appears to have had a deputy, to have done part of the work himself, and allow part of the work to be done by deputy. His functions are very extensive indeed.

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3526. He has both civil functions, and criminal?—Yes; many of them have fallen into desuetude.

3527. Is there any other officer of the Court?—There is a sergeant.

3528. Is his duty that of serving processes?—Yes; of serving processes principally.

3529. That is to say, summonses to attend the Court?—Yes; he is also considered to be the Huissier of the Court.

3530. By whom is the Greffier appointed?—By the Crown, in the same way as the Crown lawyers, by Royal commission.

3531. Is the Prevôt also appointed by the Crown?—He is elected by the States, in the same manner as the Jurats of the Royal Court.

3532. By whom is the sergeant appointed?—By the Crown: in practice, it is by the Lieutenant Governor by special commission from the Crown. There is also a Geolier, who is also appointed by the Crown.

3533. The Crown exercising its functions probably through the Governor?—Yes.

3534. What is the name of the gentleman who is now Prevôt?—Mr. Nicholas Lefebvre.

3535. Is he a gentleman who is a good deal advanced in years?—He is. Perhaps I should also state that there is also an officer called the officier des hautes œuvres, who is appointed by the Receiver, and sworn in before the Court.

3536. He is the executioner?—Yes. In order to complete the list of officers, there are also the Bordiers. They hold land and are consequently bound to conduct all prisoners from the gaol to the Court, and from the Court to execution; for the performance of which duty they are entitled to certain dinners.

3537. Is there an officer called the Portier of Cornet Castle?—He is the Geolier of the present day. He was called the Portier till 1811, while the gaol was kept in Castle Cornet. Since the prison has been in town, he has been called the Geolier.

3538. Does he live in the gaol?—Yes.

3539. Do you consider him exclusively a civil officer, as opposed to a military officer?—Yes. There are certain provisions in the Mutiny Act with respect to the keeping of soldiers in the gaol. I believe there have been some questions raised upon that subject.

3540. Is he a servant of the Governor, or a servant of the Court?—That point has been lately discussed before the Privy Council. I have not the order before me; and I forget the precise terms of it.

3541. Is that contained in the last case between the Royal Court and the Governor?—Yes.

Adjourned till to-morrow at 11 o'clock.

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*Friday, September* 25, 1846.

John De Havilland Utermarck, Esq., Contrôle de la Reine.

September 25th, 1846.

*John De Havilland Utermarck,* Esq., *Contrôle de la Reine,* further examined.

3542. Have you any observations to address to the Commissioners?—I wish to say, with regard to the questions put to me yesterday about the power of the Law Officers to enter proceedings, that our system, in this respect, is derived from certain French Ordonnances, particularly the Ordonnance of Louis XIV., dated August, 1670,* and is also in strict conformity with the modern French law, by which every criminal accusation comes before the Cour d'Instruction Criminelle, in which Court the Crown officers are also assessors, and which Court, both under the ancient and the modern system, decides whether the Instruction shall proceed or not, and in what form. In the Royal Courts of France, there is a section of the Royal Court which has the duties of the mises en accusation. It is called La Chambre des mises en accusation: and, in the towns where there are minor tribunals, the Tribunaux de Première Instance have also a section for the Cour d'Instruction Criminelle.

3543. Do any members of those Courts sit on the trial afterwards?—No. There is a Jury in France, with two or three members of the Royal Court.

3544. Are those members identical with the members who form the Chambre des mises en accusation?—I believe not.† I believe they are selected every year. I also would wish to state, that, in consequence of our system, I conceive the Court primarily and principally responsible for the mises en accusation.

3545. That is the sending a person to trial?—Yes; and the form in which he is sent also, and of course the propriety of his being sent or not. The Crown Officers are merely present to protect the interests of the Crown, and to advise the Court; and the effect of the Court refusing to put a person en accusation against the opinion of the Crown lawyers would, of course, leave it with the Crown Officers, if necessary, to complain to higher authority.

3546. What authority would that be?—Her Majesty in Council. If this responsibility were transferred from the Court to the Crown Officers, the effect would be to render them the judges and the responsible persons for directing a mise en accusation or not. I conceive, our system is also in conformity, to a certain extent, with the practice in the Court of Queen's Bench in granting informations on the motion of the counsel for an individual.

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* Ordonnance de Louis XIV., Roi de France et de Navarre, pour les matières Criminelles.

† Code d'Instruction Criminelle, Article, 257. "Les Membres de la Cour Royale qui auront voté sur la mise en accusation ne pourront dans la même affaire ni présider les assises ni assister le président à peine de nullité. Il en sera de même à l'egard du juge d'instruction."

John De Havilland Utermarck, Esq., Contrôle de la Reine.



3547. Can you tell the Commissioners the process by which a French Ordonnance, that of Louis the 14th, for instance, or the Code Napoleon, comes to be law in Guernsey?—I do not say they are law at all. I was citing that Ordonnance to prove that the same system existing here exists in France also.

3548. You were saying also that it was followed elsewhere in a system of laws springing from the same root as yours?—Yes.

3549. *The Procureur.* Terrien, in the 12th Book, 32nd chapter, page 513, says: "Qu'aucun en matière criminelle ne sera adjourné à la requeste de nostre Procureur, si non qu'l y ait décret de Juge." At the beginning of the same chapter, page 512, are these words: "Si tost que la plainte d'aucuns crimes, excez et malefices aura esté faite, ou que les Juges en auront esté advertis, ils en informeront bien et diligemment pour, incontinent après l'information faite, communiquer à nostre Procureur et, veues ses conclusions, (qu'il sera tenu promptement mettre au bas des dites informations, sans aucun salaire en prendre) estre décerné par le Juge telle provision de Justice qu'il verra estre à faire selon l'exigence du cas."

3550. These are all Ordonnances long after the time of the Separation?—By Queen Elizabeth, in 1583, parts of Terrien are approved, and among them this chapter—"Nous usons des vingt-neufiesme, trantiesme, trante-uniesme, et trante-deuiesme chapitres."

3551. *The Contrôle.* It is also very strongly confirmed in Mr. Le Marchant's Commentary.

3552. (To the *Contrôle.*) In the reference you have made to the Ordonnances of Louis the 14th, you do not mean to say that your proceedings are exactly the same as are there defined?—No; nor based upon them; it is only that the practice is similar. I would also wish to state another point, with regard to the manner in which crimes are brought before the Court. I stated, yesterday, that they were always brought, in the first instance, by the constable. I wish it to be stated that, in many cases, the constables are set to work, if I may so express myself, by the Crown Officers. Supposing a Crown Officer hears of a crime being committed, he would consider it his duty to send to the constable, and direct the constable to take the necessary steps to bring the case before the Court. In the same manner, suppose a person to come and mention to the Court that a crime had taken place: the Court would give directions to the Crown Officer to desire the constable to inquire into it.

3553. The Court would not act upon the constable immediately, but through the Crown Officers?—Yes; they would usually, through the Crown Officers, direct the constable. In case of the constable being at hand, they would send for the constable at once.

3554. Of course, disobedience by the constable would be immediately punished by the Court?—Yes.

3555. You do not understand that, if the Crown officers direct the constable to take up the matter, any discretion remains in the constable?—No; certainly not.

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*Peter Jeremie*, Esq. (Advocate), examined.

Peter Jeremie, Esq., Advocate.

3556. Will you be kind enough to tell us, in reference to the second question, whether the Court has jurisdiction over military offences committed by the Militia?—It has; and even over the soldiery in the garrison, when the acts are committed against the inhabitants.

3557. The question was rather directed to offences purely military, breaches of some military regulations?—It has.

3558. You think a private in the militia, who had disobeyed the lawful orders of his superior in rank, would be punishable by the Criminal Tribunal here?—They are sometimes brought up. There are sometimes cases of that kind brought up, not to say frequently, and as a matter of course. There is no other tribunal in this country to try criminal offences by the Militia but this Court.

3559. Neglecting to come on parade, and disobedience to an officer; would such offences as those be tried by the Royal Court?—Any case, by which a person subjects himself to fine or imprisonment, would be tried by the Royal Court of Guernsey. The best proof is that there is a Militia Ordinance of the 27th of April, 1840, rather extensive in that way, where both fines and other punishments are provided, and which regulates the jurisdiction of the Court upon that point.

3560. The Commissioners see that Warburton, in his "Treatise on the History, Laws and Customs of the Island of Guernsey," states, at page 35, that "the Governor or his Lieutenant may be present at all times when the Court sits, and has authority to command and advise the Bailiff and Jurats to observe the law in the administration of justice without any unnecessary delay thereof." Does this give him the right to be present also in the Cour Ordinaire?—I suppose he may come if he likes; but, as far as being present, that is a question which has been debated at length. I have never seen any Governor present myself yet in the Cour Ordinaire for ordinary purposes; nor do I know that there is any law to prevent his coming.

3561. When the Cour Ordinaire is sitting au secret, is there any law upon that subject?—The fact is, that the proceedings au secret are interlocutory or preliminary proceedings of the Court au Criminel. First of all, when a man is brought up before the Court before he is fully committed for trial, the proceedings are au secret; and that is conformable to the French Ordonnance. Whether the Governor has a right to be present in such proceedings is a question. I should say not, decidedly.

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3562. The *Contrôle.* That question has been solemnly argued before the Court. I am perhaps making use of a wrong term in saying argued. The Governor claimed the right; the Court heard the Crown officers upon it; and then, afterwards, unanimously came to a decision that the Governor had not the right.

3563. Has that been before the Privy Council?—No; it was in October, last year only.

3564. The *Procureur.* The reason for coming to that conclusion was, that the very object of secret proceedings is that, should there not be sufficient ground found for proceeding against the person accused, the least possible number of persons should be acquainted with the odium which, momentarily, existed against him. That is plainly the object, in looking at the very ordinance of Louis XIV. of 1670, before referred to, for requiring that the primary acts should be as secret as possible.

3565. (To Mr. *Jeremie.*) None of the answers which the Commissioners have obtained mention that the Ancien Coustumier is law here, except so far as it is contained in Terrien. —We do not recognize the Ancien Coustumier as law. Our law, as far as it is recognized, is Terrien, approved by Queen Elizabeth, in the "*Approbation des Loix:*" and, in that book of Terrien, to every chapter the lawyers, for their own convenience, generally append the remark of the Approbation des Loix.

3566. With respect to Le Marchant's Remarques et animadversions sur l'approbation des Loix, what rank do they hold as an authority?—They hold the authority which a wise and a good man always has after he has written with a knowledge of what he had undertaken. They have the weight which an English Judge might give to Lord Mansfield's decisions. For instance, the fact is, he is often quoted as an authority by the Court; but what weight he would have is left to the view which each individual member of the Court may take of it.

3567. In a good many instances he disapproves of the Approbation, does not he?—He differs from the Approbation; and he differs from the Court: and, I suppose, he differs with most of the authorities he comes in contact with. But even those differences of opinion, though they show that he was quite an independent gentleman, have had the effect of bringing many decisions of the Court to be corrected ultimately; for instance, he differs upon the extent of the right of eldership very materially.

3568. From what does he differ?—He differs from the views taken by the Court as to the custom here upon the right of eldership. I do not know that any mention is made in Terrien of the twelfth; and yet that is the custom.

3569. Is there any instance of a case in which, Mr. Le Marchant's book differing distinctly and avowedly from the Approbation, his opinion has been adopted, and that of the Approbation discarded?—No; but there are many cases, where his opinion has differed from the Approbation, in which his opinion was discarded and the Approbation followed. I know a notable instance myself, which was one of the first cases almost I pleaded here, against the Queen's Procureur. It was the case of the Vale. It was that very right of an elder son, who has the right to certain buildings. Mr. Le Marchant says the elder son should not have so much: and he said that the decisions of the Court and the law were very improperly understood. But the Court said: the law had spoken, and, though Mr. Le Marchant was a very wise man, the law must be followed till it was abrogated.

3570. Is that the view generally taken by the Bar?

The *Contrôle.* Not as to the authority which Mr. Jeremie attaches to Mr. Le Marchant.

3571. When he is absolutely at issue with the Approbation, has there been any instance in which the Approbation has been discarded and his opinion adopted?—No: Mr. Jeremie said that the same weight would be given to Mr. Le Marchant's book that an English Judge would give to Lord Mansfield's decisions. I quite dissent from that. Mr. Le Marchant's book is valuable as containing what the practice was in his day. I do not consider it a legal authority at all.

3572. Mr. *Jeremie.* I beg leave to persist in the opinion I advanced. I say it would have as much weight, as an English Judge ruling his Court. That is to say, he would have the weight of wisdom, not of law or authority. One Judge often overrules the opinion of another Judge; and, so far as that goes, Mr. Le Marchant is of some weight.

3573. Has he the same weight that you would give to the opinion of an English Judge here?—He has the authority which an English Judge would have before an English Court. His opinion may be differed from; it does not make the law. So, Mr. Le Marchant would be quoted as an authority here, to be differed from or to be followed, as each Magistrate might give weight or not to his opinion.

3574. The *Procureur.* Mr. Le Marchant's book has only been printed a few years.

3575. Mr. *Jeremie.* This passage from the preface will express the authority and weight which is to be attached to Mr. Le Marchant. It is the Court that speaks. "En mettant sous le yeux du public les Remarques et Animadversions du Rev. Thomas Le Marchant, le public est prévenu que ce n'est pas le dessein de la Cour de confirmer ou approuver toutes les opinions de cet écrivain, son unique objet étant de fournir aux habitants l'occasion de s'instruire sur l'origine de nos coûtumes locales et sur les changements qu'elles ont éprouvés à diverses époques." This work, like many other good works, has remained in a dormitory for two hundred years. It was afterwards confided to the Court to see it published; and the Court placed it under the superintendence of a committee, consisting of John Guille, the late Bailiff, then Jurat, and Peter Le Cocq, also his brother Jurat.

3576. The Commissioners understand that an ordonnance passed in the Court of Chief Pleas, which has not necessarily to go through the States, is law without confirmation by the Privy Council?—That is to say, the Ordonnances of Chief Pleas are law when they have

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once passed the Chief Pleas, without going through the Privy Council. That is a very difficult point. It is according to the subject matter of the law. If what is there ordained comes under the passage which was read to the Commissioners yesterday about the Court not having the power to make laws, and that neither they nor their predecessors ever undertook it, and that they are confined to making regulations and setting down rules and methods for enforcing and putting in execution the laws of the Island and the better enforcing the regulations of the Police, then, without the slightest doubt, the Ordonnances of the Court of Chief Pleas are laws. But I will give the Commissioners a proof that all orders from the Chief Pleas are not by themselves laws, and that, when they touch upon a legislative enactment, they have not that power. In this Island, by virtue of Terrien (I forget what chapter, but the heading is "Of Prescription"), the prescription for personal debts was formerly thirty years. The Court found great difficulty, in many instances, in adjudicating properly upon demands which were brought up, on account of the length of time; and, therefore, they thought it was right that ten years should be sufficient; and they passed an Ordonnance in 1836, that, henceforward, ten years should be the time to which the Statute of Limitations for simple contract debts should run. Now, that was an Order passed in Chief Pleas, and a very proper ordonnance; but that Ordonnance, of itself, could never abrogate Terrien; and, on the very first complaint, or rather the first discussion, which would have taken place in the case of an individual who came forward to plead the Ordinance of ten years against a simple contract debt, that Ordinance would have been called in question and its validity disputed. But the Court got that Ordinance confirmed by the Privy Council; and it is now absolutely law in full operation, confirmed, as it has been, by the Privy Council.

3577. Did not the confirmation take place after it had passed through the States?—Yes; it was passed by the Court; it was submitted by Mr. Baillif Guille to the States, and afterwards confirmed by the Privy Council.

3578. The Commissioners understand that the States themselves, without the intervention of the Court of Chief Pleas, cannot initiate a law changing the laws laid down in Terrien and the Approbation: that would probably comprehend all the Criminal Law.—I should think that the States, as well as the Court, could claim the intervention of the Privy Council for any law.

3579. Originating the law themselves?—Yes.

3579*a*. You mean that they could send a law up to the Privy Council?—Yes. They do it for all money Acts.

3580. We understood yesterday that it was confined to those?—That is a very doubtful question. I will illustrate my view of this by an example which has taken place. There was a fundamental change took place in the law of inheritance, respecting wills, four years ago. The inhabitants desired certain changes. The question arose: What authority will you go to, to get those changes? "As a matter of course," they said, "it must go to the Court."

3581. Whom do you mean by "they?"—The petitioners who prayed for those changes. They said it must go through the Court first of all to have their opinion taken. They would consult the States, as a matter of course; and from thence it must go to the Privy Council as the dernier resort. The sanction of the Privy Council was required: but that the States should be consulted was a matter which they thought must take place; and that it should go to the Court also they considered was, if not absolutely required by law, certainly the best means of preserving their interest, and that the matter might be thoroughly sifted. Therefore, they addressed their petition to the Court of Chief Pleas, and prayed the Court, in a body, at the conclusion of that petition, saying, We pray you to take the sanction of Her Majesty in Council to give this the force of law.

3582. Was this a petition to the Court of Chief Pleas?—Yes. It was a petition to the Court of Chief Pleas to change the Law of wills and inheritance. At the conclusion, after having assigned their reasons, they say: "Pour les raisons ci-dessus rapportées, vos petitionaires supplient votre Cour Royale de prendre telles mesures qu'elle jugera à propos auprès du pouvoir legislatif de Sa Majesté et Son très honorable Conseil Privé pour obtenir les changemens suivans, lesquels sont conformes à la morale et à la justice, qui semeront leur bienfaisante influence parmi les masses de la société, qui feront disparaître ces odieuses dispositions qui privent les veuves et orphelins des successions de leurs parens, qui abrogeront, en ligne collatérale, les injustes préférences du sexe masculin sur le sexe féminin en parité de degré, qui préviendront les abus pratiqués par les lignagers interessés, dans les ventes publiques, pour s'emparer à vil prix du bien de leurs parens, et, en dernière analyse, qui rendront au propriétaire d'un immeuble un des droits les plus sacrés de la propriété, celui d'en disposer comme bon lui semble, quand il ne laissera pas de descendans."

3583. There is no mention of the States at all there?—Precisely so. As a matter of course the individuals considered that the Court would take the sense of the States, as they afterwards did.

3584. When an Ordonnance or law has received the approbation of the Privy Council, of course that approbation is transmitted here from the Privy Council. Is it then registered?—Immediately; and the law dates from its registry. That is another very difficult point also. The registry is supposed to be the promulgation; and, as laws are not supposed to be known before they are promulgated, it is the registry which causes them to be known; and from that day they have the force of law.

3585. Where are they registered?—At the Greffe of the Cour Royale.

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3586. Are they read in public?—Yes.

3587. At what meeting? Is it a meeting of the Cour Royale?—Yes: the Greffier reads them; they are publicly proclaimed; and, from that moment, they become law.

3588. The *Procureur*. The Queen's Officers draw their conclusions to have them registered.

3589. Mr. *Jeremie*. No Court can be held without the Crown officers. It is at the full body of the Court or in the presence of at least seven Jurats. But, if there are not seven in the Island, the Court has declared that all the members present in the Island suffice.

3590. Is it considered compulsory with the Court to register? Have they any discretion on this point, when an Act comes from the Privy Council?—I should say not. But, when Acts of Parliament which have not been palatable either to the inhabitants or to the Court have come down, they have sometimes deferred the registry till the further pleasure or wisdom of the Legislature was known.

3591. By the "Legislature" now you mean the Privy Council?—Yes. But, the moment the pleasure of Her Majesty in Council has been irrevocably proclaimed, there has been no difficulty in the registry; and they have been registered accordingly.

3592. As to Acts of Parliament naming this Island, I think we understand that Herm and Jethou are considered to be meant whenever Guernsey is named?—Yes. They are considered to be parishes of the Island. Herm and Jethou are never named, but Alderney and Serk are named, because they have a jurisdiction.

3593. Is there not an Order in Council of 1806, which directs that Acts of Parliament distinctly naming the Island shall be law here without registration?—Yes. That has often been a great matter of discussion. The English Government directs that the Acts shall be registered, not that the register is required for the power or validity of the Acts: but the inference is that you may take notice and govern yourselves accordingly.

3594. That declaration is contained in the Order of the Privy Council which transmits the Act of Parliament?—Yes.

3595. The order referred to is in 1806?—I believe in 1805 and in 1806 several Orders came; but I do not know precisely the one to which you allude.

3596. Mr. *MacCulloch* (Advocate). It is a letter. A discussion took place, at that time, respecting the registry of an Act of Parliament which was considered to be an invasion of the privileges of the Island; and the Court in consequence suspended the registration of the Act. In the course of the discussion between the Court and the Privy Council, a letter came down to this effect, that, whenever an Act of Parliament is passed in which the Island shall be named, the Clerk of the Council shall transmit the same to the Governor, Bailiff, and so on, with directions to register. And, since that period, all Orders in Council, transmitting an Act of Parliament, state that it is transmitted to the said Island and ordered to be registered, not as being essential to the Act but, that the inhabitants of the Island may take notice and govern themselves accordingly. There is a considerable difference between an Order in Council which does not transmit an Act of Parliament, and an Order in Council transmitting an Act. I know of no instance in which the registry of an Order in Council, not transmitting an Act but a simple Order originating with the Privy Council, has been ever suspended by the Court; but, in the case of Acts of Parliament, several delicate questions have arisen. One arises from the circumstance which I think is worthy of notice. The general principle is admitted to be that no Act binds the Island, unless it is expressly named therein.

3597. Would you say specifically named, or named by implication? Supposing the Act says "All dominions of the British Crown, not being England, Scotland, or Ireland"?—I consider that to be a mooted point. My opinion is, that the Island would be bound: but I do not think the text writers go that length; nor do I recollect the thing being adjudicated upon.

3598. Supposing the Act to say "All the dominions of Her Majesty not being England, Scotland, or Ireland" what foundation could exist for the opinion that it would not bind the Island of Guernsey?—I do not know, except that the argument may be based upon its not coming under the word "specifically," which is the word used in the text writers. According to the mode at present adopted in conformity with the letter of 1806, every Act of Parliament is held by the British Legislature to be in force as soon as passed, and as only transmitted for the information of the Islands. It often happens that a particular enactment is of such a nature as might be advantageously put in force in Guernsey, but in that enactment the Islands are not referred to in any way, it refers simply to England. I will instance the Act of 9th George the Fourth, chapter 32, which relates to the Law of Evidence. If I recollect right, that Act applies specifically to England and Wales alone. There was some representation made to Government with respect to Quakers not being witnesses in criminal cases. In consequence of that, the Act of Parliament was sent down accompanied by an Order in Council, several years after it had been passed, which Order runs in the usual way. This Act is transmitted that the inhabitants of the Island may know they are bound thereby. The question then arises, whether they are bound or not. The Court have generally registered those Acts under protest. They register it, but reserve to themselves the right of making representations against it.

3599. Was this actually registered?—Yes, with a protest.

3600. Is the protest against the validity of that immediate law, or against the general liability to register?—Against both, as well as I can remember it.

3601. *The Contrôle*. Mr. Mac Culloch states that he does not know any instance in which an Order in Council not transmitting an Act of Parliament has ever been delayed in its registration. There is one instance in the year 1776. Two Orders were sent down to the

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Court. Differences had existed between the Bailiff and Jurats. On the 13th of April 1776, the Lieutenant Governor presented to the Court two Orders in Council of the 3rd of April 1776. The Court ordered those Orders to be lodged at the Greffe for a week; and, on the 20th of April, they came to the decision to delay the registry of those Orders, in order to make representations to the Crown. On the 12th of July, 1776, a letter was written by the Lords of the Council to the Court, admonishing the Court for their conduct, and ordering them to register the same immediately, which they did. The following are the Acts of Court which contain the presentation of the Orders and the determination of the Court.

*The same were read as follow:*

"Le 13me Avril, 1776, devant William Le Marchant, Ecuyer, Bailiff; Présens, Jean Guille, Jean De La Mare, Charles Andros, Thomas Dobrée, Richard De Beauvoir, Nicolas Reserson, Pierre De Jersey, Elizée Tupper et Jean Carey, Ecuyers, Jurés.

L'honorable Paulus Æmilius Irving, Lieutenant Gouverneur de cette Isle, ayant aujourd'hui présenté à la Cour un ordre de Sa Majesté en Conseil, en date du 3me du courant, requérant la publication et enregistrement d'icelui, touchant les différens entre M. le Baillif et M.M. les Jurés de cette Cour: La Cour a été d'opinion qu'il sera logé à l'office du Greffe, pour que les Magistrats puissent en examiner le contenu et donner leur opinion touchant icelui Samedi prochain.

L'honorable Paulus Æmilius Irving, Lieutenant Gouverneur de cette Isle, ayant aujourd'hui présenté à la Cour un ordre de Sa Majesté en Conseil, en date du 3me du courant, requérant la publication et enrégistrement d'icelui, touchant certaine plainte du dit Baillif contre M. l'Avocat De Havilland: La Cour a été d'opinion qu'il sera logé à l'office du Greffe, pour que les Magistrats puissent en examiner le contenu et donner leurs opinions touchant icelui Samedi prochain.

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Le 20me April, 1776, devant William Le Marchant, Ecuyer, Baillif; Présens, Jean Guille, Jean De La Mere, Charles Andros, Thomas Dobrée, Richard De Beauvoir, Nicolas Reserson, Pierre De Jersey, Elizée Tupper et Jean Carey, Ecuyers, Jurés.

L'honorable Paulus Æmilius Irving, Lieutenant Gouverneur de cette Isle, présént.

La Cour, s'étant aujourd'hui assemblée, en conséquence de sa remise par son acte en date du 13me du courant, pour délibérer et donner leur opinion, au sujet de l'ordre de Sa Majesté en Conseil en date du 3me du courant, touchant les différens entre M. le Baillif et les dits M.M. les Jurés de cette Cour, a été unanimement d'opinion, en prenant le dit ordre en considération, d'en différer l'enregistrement, vu les deux premiers articles provisoires qui y sont contenus, jusques à avoir très humblement remontré à Sa Majesté combien ces deux articles sont contraires aux droits de cette jurisdiction, et aux chartres, libertés, et privilèges accordés aux habitans de cette Isle par les augustes Prédécesseurs de Sa Majesté, et comment Sa Majesté a été mal informée à ce sujet.

La Cour, s'étant aujourd'hui assemblée, en conséquence de sa remise par son acte en date du 13me du courant, pour délibérer et donner leur opinion au sujet de l'ordre de Sa Majesté en Conseil en date du 13me du courant, touchant certaine plainte du dit Baillif contre M. l'Avocat De Havilland, a été d'opinion, afin de prévenir les disputes qui s'ensuivroient au sujet du droit de suspendre les Avocats de cette Cour, qui a été toujours du ressort de cette Jurisdiction, de différer l'enregistrement du dit ordre, jusques à en avoir fait de très humbles remontrances à Sa Majesté.

JOSNE GOSSELIN, Greffier du Roi."

3602. The *Contrôle.* The following is the letter from the Council to the Court. "After our Commendations. Whereas, in compliance with the humble petition of the States of the Island of Guernsey, His Majesty hath been graciously pleased to confirm the re-election of John Guille St. George, John De La Mare, Charles Andros, Thomas Dobrée, Richard De Beauvoir, Nicholas Dobrée, Nicholas Reserson, Peter De Jersey, Elisha Tupper, and John Carey, Esquires, to be Jurats of the Royal Court of the said Island; and whereas the said John Guille St. George, John De La Mare, Charles Andros, Thomas Dobrée, Richard De Beauvoir, Nicholas Reserson, Peter De Jersey, Elisha Tupper, and John Carey, Esquires, did prefer their humble petition to His Majesty, dated the 26th of April last, containing their reasons for having suspended the registering and carrying into execution his Majesty's two Orders in Council of the 3rd of the said month of April, the one made upon the several disputes subsisting between the Bailiff and Jurats of the said Royal Court, and the other directing that the suspension of Peter De Havilland from his office as an Advocate of the Royal Court should be immediately taken off; His Majesty, having taken the subject matter of the said Petition into his serious consideration, and looking upon the refusal of the said Jurats to register and carry into immediate execution the aforementioned Order in Council of the 3rd of April last to be, not only highly improper and unwarrantable, but also a great contempt of His Royal authority: We do therefore, in His Majesty's name and by His express command, hereby signify to you His Majesty's high displeasure at the said contempt; and do, in His Majesty's name, require and command you, forthwith to register and carry into due and exact execution His Majesty's Order in Council herewith transmitted, requiring immediate compliance with His Majesty's former Order, directing the suspension of Peter De Havilland to be taken off and likewise containing His Majesty's directions to his Lieutenant Governor of the Island of Guernsey for the taking the depositions of witnesses upon oath upon the several questions contained in the Order herewith transmitted, and signifying His Majesty's pleasure in regard to the manner in which the Bailiff and Jurats are to proceed in the respective discharge of their duty until the said depositions can be transmitted, and His Majesty's further pleasure, upon considering the same, shall be made known. And, lastly, we do, in His Majesty's name and by his express command, admonish and enjoin you, the Bailiff and Jurats of the Royal Court, that all your proceedings be governed with temper and moderation suitable to the dignity of your offices; and that you do take care that no

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interruption or delay may, in future, arise in the administration of justice within the Island of Guernsey. And, to the end that this signification of His Majesty's pleasure in the premises may remain upon record in the Royal Court of Guernsey, we do hereby further require and command that, immediately upon receipt of these presents, you do cause the same to be entered in the public registry of the said Royal Court. And so we bid you farewell."

3603. The *Bailiff*. I will take this opportunity of continuing one step further the remark made by Mr. MacCulloch with respect to the 9th George the IV., chapter 32. Here is the Act of Parliament. The difficulty is with respect to Acts of Parliament which were not intended by Parliament to apply to these Islands, but have been afterwards sent here. The first difficulty is where an Act, which, in its inception, is not made applicable by Parliament to these Islands, is transmitted with an Order in Council which does not purport so to do, but which only says, We send these things to you without ourselves giving them any validity which they had not before.

3604. (To the *Bailiff*.) The case you contemplate is one in which the Privy Council, without itself exercising any legislative power, except that of the direction to register, sends to you an Act not originally intended for the Island at all?—Yes; and where the Order in Council expressly says, We send it, not as being necessary to its validity but in order that the people may know that they are bound thereby. It does not pretend to bind them, except by an implication, which appears to be at variance with the Order in Council itself. That form appears to me to be consistent with the views of the Privy Council, with respect to an Act in which these Islands are mentioned, but to be of very doubtful operation, if of any, with respect to an Act which in its inception did not refer to the Island. In the 9th George IV., chapter 32, the enacting part of the first clause directs that every Quaker and Moravian, in place of taking the oath which had been previously required, should be permitted to make his solemn affirmation. That is in very general terms; but it was not meant to apply to this Island. A further difficulty is exemplified by the second section, and is one of very frequent occurrence. "Be it enacted, that on any prosecution by Indictment or Information, either at Common Law, or by virtue of any Statute, against any person for forging any Deed," &c., "the party shall be admissible in evidence." This is inapplicable to our proceedings, because we have no such prosecution, by either Indictment or Information, at Common Law or by virtue of any Statute. This Act of Parliament has been sent to us containing both difficulties; first, the general one put by Mr. MacCulloch, and secondly, the special one which I have pointed out. And, with respect to the second, my own strong opinion is that this section, though the Law has been sent here, can have no authority whatever, having no material upon which to operate.

3605. Perhaps, technically, the difficulty would hardly arise upon the second section. You have no case of the kind; and therefore that section would not apply.—That is exactly the view I take of it.

3606. No case can arise in this Island within that section?—No. That disposes of a single case of this kind. But there are many Acts of Parliament, in which it would be very doubtful and very inconvenient. Acts of Parliament involving a great number of provisions upon one subject forming a whole, and registered here; some parts of them being in terms applicable, and others not applicable.

3607. You are perhaps aware that there has been a difficulty of that kind in Jersey, as to the Custom House Acts?—Yes. Those are the kind of proceedings which I look to. I am looking to Acts which it would be very desirable should be enforced here, but as to which it is very difficult to say what parts of those Acts are in force and what not, and how they are to be worked.

3608. The course there is that they adopt what we call in England the cy pres doctrine. They consider that the Bailiff and two Jurats represent a Justice of the Peace—I consider it very likely that the Cour Ordinaire would represent here a Justice of the Peace. That gets rid of a single case, but does not get rid of the principle. I would give another instance of an Act which has been registered here. The Act for the abolition of the Test and Corporation Acts. That Act provides that persons shall be admissible to corporate offices on making a certain declaration instead of taking the sacramental test. That Act was sent here for registration and registered.

3609. With the usual clause in the order?—Yes. That Act applies in England and Wales. But it applies to Municipal offices only. Here there are none; we have nothing in the nature of a Municipal Corporation.

3610. You have Municipal offices, but no officers of a Municipal Corporation?—No. And it only applies to those officers who, before the Act, were obliged to take the sacramental test. No sacramental test was ever required in this Island. So that that Act is merely idle. I consider it has no effect whatever. We have no office of the kind to which that declaration is made applicable. I give that as an instance of an Act of Parliament which, though registered here, appears to have no operation, because there is nothing for it to operate upon. I believe that the Act for the regulation of the Municipal Corporations in England and Wales was also sent here and registered, having no operation whatever. Then another thing happens sometimes, that Acts of Parliament, that have been passed many years ago come over with new Orders in Council. I am not aware that any mischievous effect has resulted from it: but, within these twelve months, a bundle of Acts of Parliament relating to some matters passed in several Sessions was sent to us at once; and they were registered. That, it appears to me, is calculated to raise a great number of questions, which I think it would be very difficult to solve. Besides which, the practice appears to be open to this objection: that an Act long dormant, and

not originally intended to apply to this Island by the Parliament which passed the Act, and not intended to be applied to these Islands by the Government in power at the time it was passsed, is afterwards sent here to become law without any legislative discretion being exercised with respect to it.

3611. Why do you assume that?—I assume that from the form in which it is sent. It is merely transmitted to us to be registered, not because it has appeared at the time to the Privy Council to be a proper law to introduce, but in the same form as any other Act.

3612. It is the former case, with the additional fact of being an ancient Act?—Yes; which has been brought before the Privy Council in some way that we know nothing of, and which may be brought forward possibly for sinister purposes, for private or improper objects.

3613. What are the particular Acts which were so sent to you?—A variety of Acts relating to Church matters. I believe they were Acts which were wanted here, because some district churches were to be created, or something of that kind.

3614. Mr. *MacCulloch.* The Island is named in all those Acts. They are Church Building Acts, and Amendments of Church Building Acts.

3615. (To the *Bailiff.*) Supposing an Act, whether naming the Island or not, were transmitted and registered, and subsequently a repeal of that Act took place, and that repeal was not transmitted, what would be the Law here?

3616. Mr. *Le Retilley.* There was a case decided, I think, in which an Act had been passed and registered here. The King's officers sued for a fine. In the meantime there was an Act which repealed that Act; and that repealing Act was pleaded and the Crown officers were non-suited.

3617. The repeal of the former Act was held to be good?—Yes.

3618. The *Procureur.* I think there is the case of the Silk Act, which was sent fifty or sixty years after its passing.

3619. Mr. *Le Retilley.* Acts have been sent here, and subsequent Acts have been passed amending those Acts, which have not been sent here.

3620. Mr. *Jeremie.* I wish to make a single remark respecting the fact of an Order in Council or an Act of Parliament sent here and the question of giving that Law effect from the date of its passing, or from the date of its promulgation or registry here. I think the strongest point of view in which that can be considered is this: that, if the Law is to date from the day upon which it is passed in England, when it is totally unknown here, and people are to be bound by that Act before its promulgation, it is against the very first principle, laid down in Bacon's Universal Justice, respecting the promulgation of Laws, that they are supposed to be null before they are promulgated: and that certainly is the greatest and best feature of Law. Bacon says, "Si incertam vocem edit lex, quis se parabit ad parendum. Ut moneat igitur oportet priùs quam feriat." I will give the Commissioners an example of this very case. Take the Law, for instance, which was passed respecting Marriages, and the recent Laws of Wills. The latter was passed by Order in Council, July 13th, 1840.

3621. Do you refer to a local Law of Wills?—Yes. The Order in Council passed on the 13th of July, 1840. From that day it was Law: but it was registered here on the 3rd of Augst following. The question is from what day must that Law take effect. I would decidedly say that the Law can only take effect from the day of its promulgation. For, till it was sent here, nobody knew anything of it: and, as the Bailiff has just been telling you, sometimes you have a bundle of Acts sent which have been passed five or six years previously. Those are utterly unknown here: and what can become of the acquired rights which have taken place between individuals from the date of the passing of those Acts to the date of their registration and promulgation here.

3622. In that particular instance, is there no regulation as to the day on which it is to come into operation?

3623. Mr. *MacCulloch.* It states expressly, in that Act, that from the day in which Her Majesty's order shall have been promulgated it shall be Law.

3624. Mr. *Jeremie.* If that be specially provided for, it does not come under the rule. But I say, in general cases, it must be the same day on which the Law is promulgated. What else is to become of the acquired rights which take place under the very Acts by parties who did not know them, when those Acts come here? In France (and though that is not our Law, yet a knowledge of foreign jurisprudence is often the best guide in judging of a case, and in this Court we frequently bring up these guides for want of others) the Law is very clear. Though they are so fond there of uniformity of legislation, yet a Law does not come into operation on the same day throughout the kingdom. In Paris, if the Law passes on the 1st of July, it is Law on the 2nd; but at Marseilles, which is some hundred leagues distant, it only comes into operation six days afterwards; so that the good people of Paris are bound by one Law, and the good people of Marseilles are bound by another. That appears to us, who are very fond of uniformity, singular. Yet it is very just. Therefore, going on that principle, we say that the Law, unless it is specially provided otherwise, can only be known here through its registration.

3625. Mr. *MacCulloch.* Supposing a person to be tried and convicted upon the testimony of two Quakers, would his conviction be a good one?

3626. The *Bailiff.* The question has arisen upon section 2 of this Act of 9th George IV., chapter 32. I got rid of it in the way I have mentioned: but a considerable difficulty was expressed upon the subject.

3627. To Mr. *Lefebvre* (Greffiér). Are the Commissioners to understand that there is

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no complete collection of Ordinances in print?—No. There are a few isolated Ordinances printed; but there is no general collection.

3628. Is there any printed collection of the Orders in Council which have been registered?—No.

3629. Therefore any person having occasion to refer to those Laws must apply to you for information upon them?—They must.

3630. The *Contrôle.* It has been usual to print all Ordinances passed by the Court in a newspaper called the French Gazette.

3631. The *Bailiff.* A paper in which there is an official column.

3632. Is there any annual book printed every year, as a collection of Ordinances passed during the year?—No.

3633. Would not that be an advantage?—I should think it would be a very great advantage. The consolidation of the Ordinances has been a matter which has occupied the Court a considerable time of late.

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Thomas John Blondel Falla, Esq., Advocate.

September 25th, 1846.

*Thomas John Blondel Falla,* Esq. (Advocate), examined.

3634. The Commissioners have been told, in all the answers, that both French and English Law books are continually referred to by way of illustration?—They are.

3635. Is it for anything more than for purposes of illustration?—Only for those purposes.

3636. Is not the illustration carried a good way occasionally?—It is very often the case.

3637. Sometimes French and English Law books are at direct variance upon some principle, are not they?—It is very often the case.

3638. Will you state generally which of the two is followed in cases of that sort?—I should say the French.

3639. In the case of an attempt to commit crime with an inception of the act, that is a point upon which the English and French Laws differ. Which would be followed in such a case?—I should say the French Law would be followed.

3640. You would adopt here, therefore, the more severe rule?—That is my opinion.

3641. A very learned Advocate at Jersey answered very frankly that he would take that which best suited his client: but you think the Court would probably adopt the French view?—Yes. I should certainly myself use whichever was most favourable to my client.

3642. We are told that the precedents of the Court are also referred to; what are the means of access to the precedents of the Court?—Application to the Greffier.

3643. How do you know where to look? Are they indexed?—No. You must have an index of your own. The members of the Bar keep notes of their own: but there is no index at the Greffe office, except that at the end of each book you may find a table to give you the names; but I do not call that a general index.

3644. The members of the Bar, you say, are in the habit of keeping notes?—Yes.

3645. Each gentleman's notes, probably, would be limited to his own standing at the Bar?—Yes. Of course every young lawyer would manage to get a copy of the notes of some lawyers of more standing.

3646. You speak of manuscripts?—Yes.

3647. To Mr. *Lefebvre* (Greffier). Are the records of what takes place kept uniformly?—Yes.

3648. Are there any means of an ill-disposed person getting at the records and abstracting them?—They are safely kept in the custody of the Greffier. They never leave his custody, except to be produced in Court.

3649. Could any member of the Court take the records from your possession to his private house?—Certainly not, except by special leave on the part of the Court. The Greffier would not consider himself entitled to allow any records to be taken from the Greffe office without special permission of the Court. They are used constantly as evidence before the Court, but not permitted to go to any private house.

3650. Where they are used as evidence before the Court, they are supposed to be in your hands?—Yes: occasionally they have been taken over to England to be used in the Privy Council; which is done by a special order of the Court.

3651. The *Bailiff.* They are used in the Court House. I consider myself responsible for them while I have them before me.

3652. Mr. *Lefebvre* (Greffier). Strictly speaking, they are supposed to be in the custody of the Greffier in such a case; and I should suppose that he would be the responsible party.

3653. The *Bailiff.* The Commissioners have been told there have been certain consolidations of Ordinances. I hold in my hand a Projet d' Ordonnance relating to the Harbours, which has been alluded to more than once. This Projet, in its present form, was submitted at one Chief Pleas. The Commissioners will find that the preliminary article contains full three pages of repeals of former Ordinances, from the year 1702 to 1842. The remainder of it is a digest and improvement of the then existing Law. This Projet d'Ordonnance, having been printed in the present form with a broad margin, was made public, in order that any objections that might be made should be considered. There were two bodies of men that suggested certain alterations; the Chamber of Commerce, and an Insurance Company. All their suggestions were heard and attended to. Considerable alterations

were made in consequence of their suggestions; and ultimately the Ordinance passed with the amendments so made. The Ordinance, as now existing, is an amended edition of this which I hold in my hand.

3654. Was this one of the Ordinances which would not have required the intervention of the States?—Yes. The Ordinance is now in force, having been passed at the Chief Pleas.

3655. Is the sanction of the Lieutenant Governor considered necessary for these local Acts?—No. He is summoned to the meetings.

3656. Has he any power of veto?—No. He is summoned to the Court of Chief Pleas. There is a modification to my answer which I must make. I should state, for instance, with respect to the very Ordinance which is before the Commissioners, there are certain clauses which affect the public rights of the Lieutenant Governor. Before the measure was produced to the Court of Chief Pleas, I communicated those portions of the projet to the Lieutenant Governor. I apprehend, we could not have made any alteration, with respect to matters affecting his rights or powers, without his consent. I understand, also, that the Militia Ordinances are always made with the consent of the Lieutenant Governor, and purport to be so.

3657. You think you could not have dealt with one particular class of Ordinances without the consent of the Lieutenant Governor. In what way would that question arise? Supposing an Ordonnance to contain a regulation upon the subject of the Queen's gunpowder, with a penalty for breach of it; would it be competent for the party who resisted the enforcement of the penalty to object that the consent of the Lieutenant Governor had never been given?—No; I think not.

3658. In what way is his consent essential to its validity?—I do not know that it is, with respect to its validity. But I apprehend that the Lieutenant Governor would have the right of representing to the Privy Council that his powers had been infringed by the Court of Chief Pleas.

3659. In what way does his position, as to that, differ from his position as to any other law?—I think it would affect the judgment of the Privy Council. In the one case, it would be only a question of fact, whether the Lieutenant Governor had been consulted; in the other, whether his objections were reasonable.

3660. You think the fact of your not having obtained his consent would weigh with the Privy Council, irrespectively of the tendency of the Act itself?—I think so.

3661. This Ordinance does not require the consent of the Privy Council?—No. There is also an Ordinance with respect to the powder kept on shore, which I believe was submitted to the Lieutenant Governor. The Ordinance was suggested by the Lieutenant Governor; and the projet, when framed, was, I believe, submitted to him.

3662. (To Mr. *Carré.*) Is it the case that no Ordinance can be made regulating the Militia without the consent of the Lieutenant Governor?—I believe, in all Militia Ordinances, the preamble states that His Excellency has been consulted upon the subject, and that they are made at his request, or with his acquiescence.

3663. The *Procureur.* The Ordinance of 1803 and the Ordinance of 1840 state the request of the Lieutenant Governor that they should be passed.

3664. Mr. *De Havilland.* Practically speaking, I think he is always consulted,

3665. Are the Commissioners right in supposing that, except in those cases which have been mentioned, the Lieutenant Governor possesses no right of veto upon the ordinances of the Court?

Mr. *Carré.* I think not.

3666. (To Mr. *Falla.*) Will you be kind enough to state what the parishes of the Island are?—St Peter Port, St. Sampson, The Vale, Câtel, St. Saviour's, St. Pierre Du Bois, Torteval, Le Forêt, St. Martin's, and St. Andrews.

3667. Does each of those parishes possess its own peculiar police officers?—Yes; each of the country parishes has two constables.

3668. By country parishes do you mean all but St. Peter Port?—Yes. St. Peter Port has two constables, and four assistant constables.

3669. We are told that, in each parish, there are certain officers called Douzeniers; are they police officers?—No.

3670. What are their functions?—They are named by the ratepayers from persons who have been Constables. Their duty is to attend to the repair of the roads, to rate each parishioner, and to vote in the election of the Jurats of the Royal Court.

3671. Are they elected by every body who pays the rate?—Yes; every male who pays rates.

3672. Have they any duties at all connected with the keeping of the peace?—They have not.

3673. Is the number of Douzeniers limited in each parish?—Yes.

3674. What is their number in each parish?—Twenty in St. Peter Port; what we call la Douzaine centrale.

3675. Is there a Douzaine for each parish?—Formerly there was but one Douzaine. Douzaine means the body consisting of Douzeniers. In the town parish we have la Douzaine centrale, and four Douzaines du Canton. Twenty in the central Douzaine, and twelve in each of the four Douzaines du Canton, making sixty eight in all for St. Peter Port. In the other parishes there are twelve in each, except the Vale, where they have sixteen. The Vale is divided into Clos du Val et L'Epine. There are twelve for the Clos du Val, and four for L'Epine. Formerly the sea divided that parish in two.

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3676. Do the constables also vote in the election of Jurats?—Yes; the constables, not the Assistant constables.

3677. The two constables in each parish and the members of the Douzaine?—Yes; I should also add that the constables are the treasurers of their parishes. The constables are bound to serve at least one year, but not more than three without undergoing a new election.

3678. The Douzeniers are elected by the ratepayers, you say; on what is the rate placed?—On real and personal property.

3679. The *Bailiff*. It is a rate on the person in respect of his property.

3680. (To Mr. *Falla*.) Has every person having property a right to be rated, or is it necessary to possess a certain amount of property?—My opinion is, that it is necessary, if called upon, to shew that the person rated is possessed of a certain amount of property.

3681. What amount of property?—In some parishes as low as five quarters, equivalent to 100*l*.

3682. Mr. *Le Retilley*. Within the last few years, there has been a uniform practice to rate no one who has less than seven quarters. That regulation has been adopted with regard to the Country Hospital, to which all the parishes are liable to be rated. They made an agreement among themselves that that should be the rate.

3683. No person having less than seven quarters is entitled to vote for a Douzenier?—No.

3684. The *Bailiff*. Seven quarters representing a capital of about 140*l*.

3685. (To Mr. *Le Retilley*.) I understand you that the practice is established by a mere general convention, but not a distinct law?—It is an understanding come to among the ratepayers themselves: the general Ordinance of the Court is that all ratepayers shall have the right to vote at the election of parochial officers. Among themselves they have occasionally raised the rate from five to seven quarters. At present, in the town parish, ten quarters is the qualification.

3686. Do you mean that no body is on the books at all, unless he possesses that?—None; no one is rated to the parish requirements, unless he is worth at least 140*l*. in the country parishes, and 200*l*. in the town.

3687. Mr. *De Havilland*. Perhaps, as I was constable when those arrangements were made, I may say that there is a Hospital here for the nine parishes, which may be called an Union, to which all the poor are entitled to resort, which is in the nature of an Union in England.

3688. The Hospital is the place in which the poor of the nine parishes are supported?—Yes; the poor and the infirm of every description. The premises were originally a gift; and the parishes paid in different proportions, according to their wealth at the time: but lately it was agreed that each parish should assess itself at seven quarters.

3689. They agreed that each person having seven quarters should be obliged to contribute to the support of the poor in the Hospital?—Yes; and none under that. The ratepayers elect the Douzeniers and Constables; and those Douzeniers by law in the country parishes are qualified by at least ten quarters of assessment. The town Douzeniers are required to be qualified by thirty quarters: and those qualified officers then become the electors of the Jurats and of the Prévôt; so that no elector of these officers is rated under ten quarters.

3690. The reason of the difference of the qualification in the electors arises probably from the town not being a party to the agreement for the support of the Hospital?—Yes; they have their own Hospital for their own parish.

3691. (To Mr. *Falla*.) Is there any mode for a person to get his name inserted in the rate, supposing he has been left out?—Certainly. If, on applying to the Douzaine, they refuse, the person has a right to apply to the Royal Court and shew that he has the required amount of property.

3692. The Royal Court will allow him to prove that he has the necessary qualification. On his establishing that, will they insert him on the rate?—Yes. It would be very difficult for me to say whether such a thing has happened.

3693. You do not recollect an instance?—No; but the principle has been acted on. There was a person elected to serve as Douzenier; and the Douzaine disputed his right, because he had not the required qualification. The case came before the Court; and it was proved to the Court that he was qualified.

3694. In what shape did it come before the Court? What was the nature of the proceeding?—On a suit against the Constable, I understand. I was not at the bar at that time.

Mr. *Procureur*. A person of the name of Le Roy was elected Douzenier: he was opposed by another candidate of the name of Lenfestey on the ground of his not being qualified.

3695. Was the objection that he did not appear by the books to be qualified, or that the books wrongly represented him to be qualified?—That he did not appear by the books to be qualified. The parties were sent before a Magistrate, as a Commis of the Court, to examine the amount of his property.

3696. By a Magistrate you mean a Jurat?—Yes. He proved that he possessed the requisite qualification; and he was sworn in.

3697. He was entitled to impeach the books collaterally?—Yes. He proved that he was worth ten quarters. I understand, in that particular case, before he was chosen, he had given notice to the officers to rate him at the ten quarters.

3698. Was Mr. Lenfestey a candidate claiming the office of Douzenier himself?—I believe so.

3699. Mr. *Mac Culloch.* Mr. Le Roy had the majority of votes; but Lenfestey said, Although I have not the majority, I am legally elected; the others have thrown away their votes by voting for an unqualified candidate.

3700. The *Procureur.* There was also, I believe, another case at La Forêt.

The *Contrôle.* It was the case of Allez. On his appearing to take the oath of Douzenier, about four years ago, certain ratepayers protested against his being admitted to the office, on the ground that he did not possess the requisite qualification, although rated upon the books. Upon that the Court ordered the party to be sent before a Magistrate to examine whether he possessed the necessary qualification. He proved that he did possess the requisite qualification; and he was sworn in.

3701. (To Mr. *Falla.*) Supposing a person wished to object to some one else, as being improperly placed upon the rate, is there any legal mode of doing that? Suppose ratepayers in parishes A, B and C are inserted in the rate, as possessing the proper number of quarters, but that in fact they do not possess it, and have no right to be there?—I am not aware of any proceeding in such a case, except in the case of a contested election.

3702. Perhaps the same answer would apply to the objection that a party was rated too high?—I do not know of any proceeding in any case similar to that, except, of course, on the principle of a person disputing a party being Constable or Douzenier.

3703. Might a third party say, You have rated such a party at the requisite number of quarters to make him a Douzenier; I dispute his qualification? Could any third party take an objection of that kind?—I think such an objection might be taken; but I do not know of any case.

3704. Mr. *Le Retilley.* An occurrence of that kind would be hardly known. Everybody would seek to screen himself from being rated higher than necessary.

3706. (To Mr. *Falla.*) What is the qualification for a Constable?—There is none except being on the rate.

3707. That is to say, having seven quarters in the country parishes, and ten quarters in the town parish?—Yes.

3708. Is the Constable an elected officer?—Yes.

3709. By whom is the Constable elected?—By the ratepayers.

3710. Is the rate imposed on the full amount of property?—Yes.

3711. It is not a rate on a nominal amount of property, but on the actual one?—Yes.

3712. So that a person having fifty quarters would be rated at fifty quarters, and if he had a hundred quarters he would be rated at a hundred?—Yes.

3713. Mr. *De Havilland.* As far as the Douzaine is enabled to discover the full amount.

3714. (To Mr. *Falla*). Have they any inquisitorial power?—I do not believe there is any means of compelling a party to declare what he is worth. But, if he refuses to be rated as high as he is set down on the books, the Douzenier can bring him before the Court, and the Court will call upon him to declare whether he is worth that sum or not. The Court will put to him the question, Will you swear that you are not worth that: and he will swear what he is not, or that he is. But I do not believe the Court could make him declare that he is worth.

3715. They can ask him whether he is worth so much or not?—Yes; the question is put to him on his oath.

3716. The *Procureur.* They put the question, How much are you worth; and what he declares they rate him at.

3717. Mr. *Falla.* I must add to that, that it is not left to the Court to administer the oath. The Constable or any other parish officer suing can say, I am ready to prove that this person is worth so much. When a rate payer is actioned for his rate, if he comes before the Court, and says, I am not worth that, the officer suing may say, I am ready to show he is worth that. It is always left to the officer suing to prove that the rate payer is worth that.

3718. The officer is allowed to give proof that the rate is correct?—Yes. And then the party is sent before the Commis of the Court.

3719. Can the party himself demand to be put upon his oath?—No.

3720. Can the Court, if they think fit, put him to his oath?—I consider that they have no right to do so, unless the officer leaves it to the oath of the party sued.

3721. Mr. *De Courcy.* It has been enforced by the Court.

3722. Mr. *Falla.* If a Constable brings a party before the Court, he has two courses; either he may take the proof upon himself, and show that the party is worth so much; or he may say, I am content to leave it to the Court to put him upon his oath. Then the Court puts it to the person charged; and, if the person charged refuses to be sworn, the Court assumes the amount correct, and puts him upon the rate at that amount.

3723. If he is sworn they take his oath?—Yes. But, if the party himself states it is not possible for him to declare the value of his property, then he has the option of being sent before the Commis, before whom he is bound to give a statement of his property.

3724. Is that secret?—No.

3725. The Constable has the right to vote for a Jurat, has he not?—Yes, while in office.

3726. Is the Constable a member of the States?—He is a member of the Electing States, since he has a right to vote for the election of a magistrate.

3727. We have been told that particular laws are passed by the States: is he a mem-

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ber of the States who pass those laws?—No: he has a right of voting in his ov Douzaine upon any measure proposed in the States and sent to that Douzaine.

3728. Is it the course that, when a law is proposed which is to go through the States, it is sent by the States to each Douzaine, to take the opinion of the Douzaine upon the proposition?—Yes.

3729. And there the Constable votes?—Yes, in his own Douzaine.

3730. Mr. *Carré.* Properly speaking, there are not two States; it is the same body in a different mode of action. The States of Election are the great body of the States, united in one for the purpose of electing a magistrate. The States of Deliberation are composed of the Bailiff, the Jurats, the Clergy, and the Queen's Procureur, together with two deputies from the Central Douzaine, and one from each of the Central Douzaines of the town parish, and one from each of the other parishes.

3731. Has the Bailiff a vote?—Yes; he votes first.

3732. How many clergy are there?—There are eight. The parishes La Forêt and Torteval are united, and the Vale and St. Sampson's.

3733. The *Bailiff.* There is only one body to be denominated the States. One frequently hears the States of Deliberation and the States of Election spoken of. The States consist of the Bailiff, the Jurats, the Clergy, the Queen's Procureur, and the Douzaniers and Constables of every parish. Every member of the States has an individual voice in the election of a Jurat. In matters of deliberation, the Douzaniers have not an individual voice; but each parish has one collective vote. According to the former practice, I believe, in very ancient times, the Douzaines were in the habit of attending and instructing their Constable at the meeting to vote either this way or that. But that fell out of use, and, instead of coming to the States, they deliberated, each Douzaine in their own parish; and the Constable, as their representative, came to the States with their vote. The Billet d'Etat used to be addressed to the constables. "Messieurs les Connétables, Vous êtes avertis qu'il se tiendra une assemblée des Etats au lieu ordinaire, Mercredi 27 Mars, 1844, à onze heures du matin, pour délibérer sur les objects suivans. Vous êtes donc réquis de communiquer ce Billet à votre Douzaine, pour qu'elle se consulte et vous donne son opinion là-dessus que vous rapporterez à la dite assemblée le dit jour et heure. Vous ferez la même communication à votre Recteur, afin qu'il se trouve à la dite assemblée pour y donner aussi son opinion." So that the Constable had to give notice to the douzaine and also to the rector within the parish; and the constable then came bringing with him the result of the deliberation of the Douzaine. The difference, therefore, between the States of Election and the States of Deliberation is, that in one every member has a vote, and in the other the parishes have each only one collective vote. Then the alteration which has been made in the Constitution in 1844 was this: that, instead of the Constable being ex officio the organ of the Douzaine, the Douzaine elected one of their number as a deputy, to be their representative and to vote according to his own judgment, so that the voice of the Douzaine is confided to the judgment of the deputy. Another alteration, introduced at the same time, was that further representation was given to the town. Formerly there was only one Douzaine in the town, a Douzaine of twenty. The town was subdivided into four districts, each of which had, besides the general Douzaine of the town, a Douzaine of twelve. There is one point of view in which the two bodies of the States may be considered as one. It frequently happens that a Committee of the States of Deliberation is appointed; a Committee of their own body. I believe it is considered that every member of the States, in the largest sense of the word, is competent, as a member of the States, to be put on that Committee. This is very convenient, because, a deputy elected only pro hâc vice being nominated on a Committee, although he ceases to be a deputy and so loses his voice, nevertheless, as Douzanier, he continues a member of the States, and capable of serving on the Committee. As far as the States are concerned, therefore, it is not merely an historical question.

*The following Paper, containing the Constitution of the States of Guernsey confirmed by Order in Council, was delivered in.*

CONSTITUTION des ETATS de GUERNSEY, confirmée par ORDRE de SA MAJESTÉE en CONSEIL, en date du 13 Décembre, 1844.

1. Aucune taxe générale ne sera levée qu'après avoir été votée par les Etats de Délibération, à la majorité de deux tiers des membres présens. Sous cette condition, ils pourront lever, dans le courant de chaque année, des taxes générales jusqu'au montant, tout ensemble, d'un penny per quartier. Toute taxe qui dépassera ce montant demandera d'être confirmée par la majorité d'une assemblée des Etats d'Election, et doit recevoir la sanction de Sa Majesté en Conseil signifiée par le moyen d'un de ses Principaux Secrétaries d'Etat, Anglicé, "*and must receive the consent of Her Majesty in Council, signified through one of Her Majesty's Principal Secretaries of State.*"

2. Les taxes générales seront réparties d'une manière uniforme, d'après les principes posés dans l'ordonnance de la Cour Royale du 30 Avril, 1821, sur tous les biens meubles des habitants contribuables, de quelque nature, ou en quelque pays, qu'ils puissent être; et sur tous les héritages en cette Ile et dans les îles d'Herm et de Jethou, soit que les propriétaires de ces héritages aient, ou n'aient pas, d'établissement dans ces dites îles.

3. Les dits biens, tant meubles qu'héritages, seront responsables de la dette actuelle des Etats, toute fois et quantes que sa liquidation serait requise.

4. Toutes taxes votées par les Etats seront côtisées par la Douzaine de chaque paroisse, et perçues par les connétables, de la même manière que les taxes paroissiales.

5. Lorsqu'il sera question de lever une taxe générale, les connétables de chaque paroisse fourniront au Trésorier des Etats une liste des contribuables dans leur paroisse avec le montant de leurs biens,

réduits en quartiers, suivant à la manière de lever les taxes paroissiales, qui devra être uniforme pour toute l'Ile ; et d'après le nombre total de quartiers le dit Trésorier indiquera à chaque Douzaine paroissiale le montant qu'elle aura à lever dans sa paroisse.

6. Comme il n'est que juste que la ville et paroisse de St. Pierre-Port, qui doit supporter la plus grande portion des contributions publiques, et qui a dans son sein plus de la moitié de la population de l'Ile entière, ait de suite une augmentation de voix dans les assemblées des Etats, elle aura cinq voix d'ajoutation dans les Etats de Délibération et quarante huit voix d'ajoutation dans les Etats d'Election.

7. A cet effet, la paroisse de St. Pierre Port sera divisée, au dire de ses propres autorités, en quatre cantons égaux, autant que possible, par rapport au nombre des contribuables et au montant de leurs contributions. Chaque canton aura une Douzaine qui enverra un Député, choisi de parmi ses membres, aux assemblées des Etats de Délibération, et la Douzaine paroissiale en enverra deux. Et seront les dits Douzeniers de canton, avec les Douzeniers et Connétables de la Douzaine paroissiale, membres des Etats d'Election.

8. Chaque Douzaine de canton sera composée de douze membres, les qualifications et les termes de service desquels seront les mêmes à tous égards que ceux des Douzeniers de paroisse. Ils seront élus par une assemblée des contribuables du canton. Les premières assemblées pour cet effet seront convoquées et présidées par les connétables de la paroisse, et toute assemblée subséquente sera convoquée et présidée par le Doyen de la Douzaine du canton. Et seront les personnes élues présentées à la Cour Royale par le Doyen pour être sermentées avant de pouvoir entrer en charge.

9. La charge de Douzenier de canton n'exemptera pas des charges paroissiales les individus qui y seront élus. Si un Douzenier de canton devient Douzenier de paroisse, s'il cesse à habiter le canton, ou s'il s'absente de l'Ile pour un an et jour, il sera de suite remplacé par un autre individu.

10. Chaque Douzaine de canton aura la surveillance des chemins publics dans la canton en dehors des barrières, et sera présidée par le plus ancien de ses membres, auquel le Président des Etats adressera ses billets de convocation.

11. Ces changemens n'affecteront en rien la constitution ni les fonctions de la Douzaine de la ville et paroisse de St. Pierre Port, sauf en ce qui regarde la surveillance des chemins en dehors des barrières. Elle restera composée, comme elle est actuellement, de deux connétables et de vingt membres ; et toute élection pour remplacement se fera, comme par le passé, par le contribuables de la paroisse en assemblée générale.

12. La division de la paroisse de St. Pierre Port en cantons ne dérogera en rien à l'unité de ses habitans contribuables, dans les assemblées de paroisse, pour ce qui regarde les taxes paroissiales, les élections de connétables et des autres officiers paroissiaux, et les autres affaires de paroisse, lesquelles seront, comme par le passé reglées par les dites assemblées.

13. Les Etats de Délibération seront composés de la Cour Royale et du Clergé (comme aujourd'hui) et des Députés des Douzaines, comme suit, savoir : Monsieur le Président 1 voix ; Messieurs les Jurés de la Cour Royale, 12 voix ; Messieurs les Recteurs de paroisse, 8 voix ; Monsieur, le Procureur de la Reine, 1 voix ; Messieurs les Députés des Douzaines de St. Pierre Port, 6 voix ; et Messieurs les Députés des Douzaines des paroisses de la campagne, 9 voix ; en toute, 37 membres.

14. Les Députés des Douzaines de paroisses, au lieu d'être nécessairement les connétables, comme aujourd'hui, et aussi les Députés de Douzaines de canton, seront ceux que chaque Douzaine nommera d'entre ses membres, à la pluralité des voix, lors de chaque convocation des Etats ; et seront les dits Députés tenus de livrer à Monsieur le Président, avant ou lors de l'évocation de l'assemblée, leur autorisation par écrit.

15. Les membres des Etats de Délibération jouiront tous dans leurs assemblées des mêmes privilèges et prérogatives. Le Président, en vertue de son office, aura la police de l'assemblée et en réglera les procédures. Ils seront libres de discuter tous les objets soumis à leur délibération ; et pourront tous, également, proposer amendemens ou modifications aux articles contenus au Billet d'Etat, aussi bien que sursis ou ajournemens de l'assemblée. Tout amendement ou modification sera rédigé par écrit, et, s'il est secondé, il sera soumis par le Président à l'assemblée, pour qu'elle en dispose définitivement ; pourvu toute fois qu'il ne dépasse pas l'objet de la proposition d'origine. Mais dans tous les cas où une mesure proposée aux Etats ne serait pas admise, rejettée ou modifiée, par les deux tiers des membres présens, elle pourra être soumise une seconde fois, dans un mois au plus tard, par le Président, s'il le voit bon, aux dits Etats, et sera alors décidée à la majorité des voix des membres présens.

16. Le Président des Etats, sur la requête par écrit de la majorité d'un des trois corps des Etats (un Connétable de paroisse, ou un Doyen de Douzaine de canton, signant au nom de sa Douzaine comptant pour un membre) ou de dix membres pris indifféremment dans les Etats de Délibération, sera tenu, après avoir conferé avec Monsieur le Lieutenant Gouverneur quant au jour de l'assemblée, de convoquer les Etats, dans un temps raisonnable à l'effet de la dite requête ; bien entendu cependant que le sujet y soit exprimé en termes clairs et précis.

ETATS D'ELECTION.

17. Les Etats d'Election seront composés comme suit :—

| | |
|---|---|
| Monsieur le Bailiff et Messieurs les Jurés de la Cour Royale | 13 |
| Messieurs les Recteurs des paroisses | 8 |
| Monsieur le Procureur de la Reine | 1 |
| Messieurs les Connétables et Douzeniers de la paroisse de St. Pierre Port | 22 |
| Messieurs les Douzeniers des cantons de la dite paroisse | 48 |
| Messieurs les Connétables et Douzeniers des paroisses de la campagne | 130 |
| Membres | 222 |

18. Les Billets de convocation des Etats de Délibération et d'Election, seront à l'avenir adressés aux membres des Etats généralement ; et en fournira M. le Greffier, huit jours pour le moins avant l'assemblée, une copie à chacun des membres de la Cour et du Clergé, au Procureur de la Reine, et autant de copies aux Connétables de chaque paroisse et Doyens de Douzaine de canton, comme il y aura de membres dans leurs douzaines respectives, et une en sus pour être gardée avec les registres de chaque Douzaine.

3734. How long are the Constables elected for?—The Constables are bound to serve one year, but cannot serve more than three years without a new election.

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3735. On entering his office, is he sworn in as Constable?—After he is elected, he is summoned to appear before the Court, that is, two Magistrates and the Bailiff, and is there bound to take the oath of office. The oath is taken before the Cour Ordinaire; but, if there is any objection on the part of the rate-payers, then the case is referred to a Court composed of the Bailiff and seven Magistrates at least?

3736. Does the constable take an oath?—Yes: the following is the oath.

*The same was read as follows:*

SERMENT DE CONNÉTABLE.

Vous jurez sur les Saintes Evangiles, et promettez par la foi que vous devez à Dieu, que bien et fidellement vous exercerez l'office et charge de connétable en la paroisse de , en laquelle vous avez été choisi, et maintenant êtes en ce lieu approuvé et reçu, selon les devoirs de la dite charge en général, et particulièrement selon les points qui ensuivent.

1ier. Vous procurerez l'avancement de la Gloire de Dieu, maintiendrez la religion par la Grâce de Dieu reformée et établie en ce lieu selon les loix de l'Eglise Anglicanne, et encouragerez les bonnes mœurs.

2e. Vous serez toute votre vie fidèle et loyal sujet à notre Légitime Souveraine, Dame Victoria, par la Grâce de Dieu, du Royaume uni de la Grande Bretagne et Irelande Reine, et à ses nobles Hoirs et Successeurs, la Majesté de laquelle reconnoissez, immediatement sous Dieu, Suprême Chef et Gouverneur sur toutes Personnes et en tous ses Royaumes et Dominions en toutes Causes Ecclésiastiques et Civiles.

3e. Vous maintiendrez de tout votre pouvoir le bien, la paix et la tranquillité de cette Ile en général et de votre paroisse en particulier.

4e. Quand aux devoirs particuliers de votre charge: vous porterez honneur respect et obéissance due aux Magistrats de cette Ile, particulierment a Monsieur le Gouverneur, Monsieur le Baillif, Monsieur le Lieutenant Baillif, et Messieurs les Jurés, les honorant vous mêmes et les faisant honorer aux autres par votre exemple, chacun suivant son rang et qualité, et en exécutant, et faisant exécuter, les jugemens et ordonannces politiques des Magistrats et Etats de cette Ile, autant que le devoir de votre charge le requerrera, pour le service de Sa Majesté et la manutention du bien et tranquillité publique de cet Etat.

5e. Vous garderez, et autant qu'en vous est, y ferez garder et maintenir, les loix, libertés, franchises et priviléges de ces Isles, et pour l'effet tacherez d'avoir bonne connoissance des premises autant qu'il sera requis et nécessaire pour la bonne et fidelle administration de votre dite charge.

6e. Quand à votre devoir particulier en qualité de membre des Etats, entre lesquels vous êtes reçu et admis: vous serez diligent à y assister toutes fois et quantes que serez semondé, y donnerez votre propre conseil et avis, et rapporterez celui de votre paroisse, le tout en toute fidélité et rondeur de conscience, ayant principalement égard à la Gloire de Dieu, service de votre Prince, et bien et utilité publique de cet Etat; gardant secrettes les choses qui y seront traitées jusques à ce que par consent général soit permis de les révéler; vous conformant paisiblement à ce qui sera conclu et arrêté par la pluralité des voix.

7e. Pour ce qui regarde votre Paroisse, vous tâcherez de découvrir et amener en Justice les malfaiteurs et délinquants coutre les susdites loix et ordonnances. Vous avancerez la gloire de Dieu le bien et la paix publique, et ménagerez fidellement les deniers publics pour en rendre bons et justes comptes toutes fois et quantes qu'en serez requis.

Dieu sauve la Reine.

3737. Is that an oath of ancient date?—The oath, in its present form, is of the date of 1605.

3738. Has there been any change made in it since that time?—No. In 1800 the Royal style, dropping the title of King of France, was adopted; but there has been no other alteration.

3739. The *Bailiff.* With respect to the oath, I should say there was an oath, probably nearly the same as this, in force before the year 1605. In 1605 the States were revived; and new duties were therefore imposed upon the Constable. The States were revived in consequence of an Order in Council, which in three lines ordered the revival, but entered into no particulars. I suppose the particulars were worked out in the Court of that day. We have it on the Records of the Court, that, when the States met for the first time, a certain oath, which is there recorded, was then administered to the Constables. That is the oath which has just been read: and no alteration, except a formal one, was made in that oath, until the time when the constitution of the States was altered in 1844. The Commissioners will see, by looking at the oath, that the duty imposed upon the Constable as a member of the States had reference to the then existing constitution, and to the duties which he then had to perform. The Constable no longer having those duties to perform, the Court thought it would be right to alter the oath, and make it correspond with the duties he had to perform. The Court also at the same time made certain other alterations by leaving out parts, against which it was thought objections might be made on religious grounds, which I am not aware that it is necessary for me to go into. The Court made an Ordinance that the oath as altered should be taken: and, a Constable having objected to take it on account of the title of "Defender of the faith," and the phrase "L'avancement de la gloire de Dieu," the first being new and the other in the former oath, was brought before the Court. Proceedings were taken against him; and he was sentenced to take the oath under a penalty of 20*l.* Upon that he presented a petition to the Privy Council. There was also a petition against the oath at the same time from certain dissenting ministers. The Order of the Privy Council is that the Act of Court should be set aside, the Lords of Council thinking that the Court had no power to alter the ancient form of oath. Whereupon the Court repealed all the Ordinances which it had made with respect to this oath. So that the old oath of 1605 now remains the only oath.

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3740. Are you aware whether the power of altering the form of an official oath was ever exercised by the Court?

3741. The *Procureur*. Yes. Assistant Constables werea ppointed in 1736 by an Ordinance of the Royal Court. There was a subsequent ordinance in 1799, altering the duties of assistant Constables. In one of those ordinances an oath is imposed upon the assistant Constables.

3742. That would be a new oath, not an alteration of an old one?—Yes. Sometime after this, the rate-payers at large presented a petition to the Privy Council claiming to have the right to elect the assistant Constables. By the Ordinances that right was given to the Douzaines, I think. The prayer of that petition of the rate-payers is "to be allowed to maintain their right to elect." Counsel were heard; and the petition was dismissed. The Ordinance of the Court was there upheld against the petition of the parish, part of the Ordinance being that oath.

3743. The Ordinance creating the oath for a new office was passd in 1799?—Yes.

3744. The petition raised a question as to the right to elect?—Yes.

3745. That would refer to the Ordinance of 1736, would not it?—The petitioners ask; "that the assistant Constables shall, in future, be named by the heads of families, in the same manner as the Constables and other Parish officers are at present elected. That, after two years from the date of the first election of an assistant by the heads of families, the constables shall only be chosen from among the assistants, or among those who shall have already served as assistants." Their Lordships, on the 29th of May, 1826, "declared they saw no reason to advise his Majesty to make any alteration in the existing Law."

3746. The *Contrôle*. The order of the Court of Michaelmas Chief Pleas in 1799 was for the purpose of giving the assistant constables additional power and defining that power; and also creating the oath. The mode of election would have been fixed by the Ordinance in the year 1736. They pleaded against the legality of the Ordinance of 1736, and also against that of 1799: and their prayer states: "They would certainly have wished to obtain, in the first instance, the approbation of the States; but, rather than enter into a discussion which more nearly concerned the States than themselves, they now humbly pray that your Majesty will in your royal wisdom be graciously pleased to allow them to be heard by their counsel before the Lords of your Majesty's most honourable Privy Council, and to maintain the parishioners of St. Peter Port, paying rate, in their right of naming their own parochial officers; and further to grant your royal sanction to both or either of the regulations approved of by the parish deliberation of the said second of September, so that they may in future be acknowledged as law in the Island of Guernsey." That was their prayer.

3747. They did not take any objection to the oath in their prayer?—No, not specifically. The petition was referred to the Court; and the Court sent an answer. The decision is: "The Lords of the Committee this day resumed the consideration of the original petition of the Committee of the inhabitants: and, having also considered the said petition of the High Constable's and Douzainier's, together with papers accompanying the said petition and other documents, and having heard counsel, on both sides, thereupon; Their Lordships agree humbly to report, as their opinion, to your Majesty, that it will not be advisable for your Majesty to comply with the prayer of the petition of the inhabitants of the said town and parish of St. Peter Port for electing their own parochial officers."

3748. (To Mr. *Falla*.) In St. Peter Port parish there are certain officers who are assistant Constables?—Yes.

3749. How many are there?—Four.

3750. Those assistant Constables are selected by the Douzaine, and not by the parish at large?—They are selected by the Douzaine.

3751. Is there any qualification for the office of assistant Constable?—No.

3752. Not even that they should be rated?—No.

3753. Do they form a portion of the Douzaine?—No.

3754. Are the four assistant Constables and the two parish constables the whole Police of the parish of St. Peter Port?—That is all the Police by the constitution of this Island.

3755. And in the country parishes two constables?—Yes.

3756. There are certain officers called Special Constables, are there not?—In case of need their names are brought before the Court: they are summoned before the Court and sworn in.

3757. Are the Special Constables appointed by the Constables?—They are presented by the Constables and the Douzainiers to the Royal Court, as I understand.

3758. Are they bound to serve?—No.

3759. The Constables and Douzainiers present the Special Constables to the Court; and they take an oath of office?—Yes, an oath to do their duty.

3760. At what time did the appointment of special Constables commence?—I think about the year 1832 they were first appointed.

3761. Was there an Ordinance of the Court for the purpose?—No: an Act of Court was made recording their appointment.

3762. Mr. *Tupper*. I was in office as Constable of St. Peter Port in 1837; and they were appointed at that time.

3763. Mr. *Jeremie*. They were elected on account of a great number of robberies that took place. They came forward and offered their services; and the Lieutenant Bailiff paid

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them a handsome compliment, and told them that their coming forward in that way was the best proof of their willingness to do away with those robberies.

3664. Mr. *Dobrée.* I believe, invariably, all those individuals who have served the office of Special Constable are persons who have already served their turn in the duty of assistant Constable.

3765. All the individuals who are Special Constables have before been assistant Constables?—Yes.

3766. (To the *Bailiff.*) Would the Court have the power of appointing any other person Special Constable?—Any person who was willing.

3767. How does the power of the Court in the first instance to appoint a Special Constable arise?

3768. Mr. *Le Retilley.* On the application of the Constable. When he sees the necessity he applies to the Court for additional aid.

3769. How does the limitation arise as to their having been assistant Constables before?—Their previous service is considered to be a proof of the value their services will be of in future.

3770. Mr. *Carré.* The Constable would not present any person but one who had been formerly chosen by the Douzaine.

3771. (To Mr. *Falla.*) Can you tell the Commissioners how many Special Constables there are in St. Peter Port?—About twelve.

3772. Do they exist in any other parishes?—No.

3773. Are they paid?—No.

3774. Are any of the other peace officers you have mentioned paid?—No.

3775. For how long are the Special Constables appointed?—The first time they were appointed, I believe, the time was specified.

3776. (To Mr. *Carré.*) Do you know whether Special Constables are appointed for a limited time?—No. Some have been appointed jusqu' à autre ordre, till a further order was given. Others have been appointed to the next Chief Pleas. I believe none of those now in office has been appointed for a limited time.

3777. The *Contrôle.* Those now in office were all appointed jusqu' à autre ordre.

3778. Mr. *Falla.* They can resign their office whenever they think proper.

3779. The *Bailiff.* They would apply to the Court to discharge them.

3780. Is the Court bound to discharge them upon their application?—I believe it is so.

3781. Mr. *Dobrée.* I recollect, when the last Special Constables were sworn in, one of the gentlemen of the Bar was deputed to ask the question for them, whether they would be entitled to their discharge, if circumstances rendered it desirable for them to apply for that purpose. The Court said: Yes; they would be discharged upon their own application.

3782. (To Mr. *Falla.*) What is the power of the Special Constable?—He has the same power as the assistant Constable.

3783. Have the assistant Constables, as officers of police, the same power as the Constable has?—Yes, as officers of police.

3784. Would a Special Constable or assistant Constable have the power of presenting an offender to the Court?—Yes.

3785. Mr. *MacCulloch.* With respect to the Police: the harbour masters are sworn also as Special Constables for the harbour and its neighbourhood. And also the keeper of the market for the market; and the sexton is sworn in as Special Constable for the parochial cemetery. These act only within their precincts.

3786. How many harbour masters are there?—There is one at St. Sampson's, and one for the town. Occasionally the Court has sworn a Special Constable to act in the small Island of Herm. At one time there were mines and quarries there, which rendered it necessary for them to do so. The harbour masters receive salaries from the States out of the revenues of the harbour. The market Constable is also paid for collecting certain dues.

3787. How is the market Constable paid? Is it by a fixed salary or by a commission?

3788. Mr. *Carré.* By a fixed salary.

3789. Mr. *MacCulloch.* In order to be quite accurate, I should say that it is the deputy harbour master who is sworn Constable of the town harbour.

3790. Mr. *Carré.* I think it may be as well to observe that the first Special Constables that were named were on account of the necessities of the moment; and they were then appointed for a fixed time. When that time expired they had been found so useful, as an assistant to the Police during the period for which they had been sworn, that they were again presented to the Court by the Constable and sworn jusqu' à autre ordre.

3791. The Constables and assistant Constables act throughout the Island, do not they?—Yes.

3792. Would they act in Herm and Jethou?—If necessary.

3793. So that the assistant Constables would not be confined to St. Peter's Port, but might act in St. Sampson's and St. Martin's?—Yes; every Constable is sworn for the whole Island; and he may act for the whole Island.

3794. Mr. *MacCulloch.* It is merely a matter of courtesy among themselves that they do not do it.

[Adjourned to Saturday at 10 o'clock.]

GUERNSEY.

Charles Lefebvre, Esq.

September 26th, 1846.

*Saturday, September* 26, 1846.

*Charles Lefebvre, Esq.*, Greffier, examined.

3795. Will you produce to the Commissioners the earliest copy of the Extent referred to in the Précepte d'Assize which you have?—This (*producing it*) is the earliest copy which we have. No original exists. Sometime ago I was in London: I examined the Office in the Tower, and the Library in Serjeant's Inn in search of the original, but could not find it. This was compiled from various extracts in the possession of individuals in the Island.

3726. What is the date of it?—This appears to have been compiled in the year 1840.

Mr. *De Havilland.* The earliest copy of the Précepte D'Assize which we have is an Acte of Court, which, of course, like other Actes of Court, must have been entered in the book which is no longer in existence; for all the books anterior to 1527 belonging to the records here have been lost or destroyed.

3708. Or carried off by the monks?—We suppose they may have been so. There have been some traditions that they carried off or burnt some of them; at all events, the earliest record which we have is in 1527. The conclusion which has been always arrived at is that the Précepte D'Assize was an Acte of Court, entered in the book in the usual manner as other Actes of Court, and that, upon some occasion, which from the care with which it is made out was evidently an important one, this copy was made. The last part of it I consider to be merely a declaration, on the part of those who signed it, that the above Acte was true: and that was done in the year 1441. The Acte being entered in the book, of course it need not go beyond that. That was all they wanted: but, when that was required in 1441, then came the latter part added by the people who had signed it. The original we have always considered to have been completed in 1331. It may have been begun before.

*The Précepte d'Assize was put in, and is as follows.*

"Cy ensuyent partie des libertés usages et anciennes Coûtumes usées tenues et gardées en l'Isle de Guernezey de tout le temps dont mémoire de hõme n'est du contraire, et approuvées deuement yllenques par deuant les Justices de Notre Souverain et très excellent Seygnour le Roy d'Angleterre, c'est à scavoir, par Sire Robert de Northton chevalier et Sire Willm de la Rue Justices errants en la dite Isle adoncques, en l'an de l'incarnation notre Seignour mil trois-cents et trente-ung, et l'an du Roy Edouard le tiers après le conquest d'Angleterre quynt, et par en après recytées allegiées et deuement approuvées par deuant Sire Henry Spigornel et William Denon, et semblablemt par deuant Sire Robert de Scarborough et ses compagnons, Justices, illec transmis par Nostre susdit Souverain Sire, le Roy, et aynsy cõme il est contenu et exprimé plus plainement en l'Estente de Nostre dit Souverain Seigneur le Roy, laquelle il a commandé et expressemt chargé à tous ses Justiciers, Ministres, Officiers, Communes et Habitans de la dite Isle tenir et garder et pleinement observer sans variation ou contradiction quelconques sur le peril qu'y appartiendra, et en outre et d'abondant approuvées d'empuys par bonnes et loyalles Enquestes de toutes et chacunes des paroisses de la dite Isle par devant honorables et discrets Juges, les Baillifs et Jurez de la dite Isle de Guernezey et mesuremt en la présence de Honorables et discrettes personnes, Sire Laurens Ponchin, Prestre, Nottaire et Tabellion Apostolique et Imperial, Maître Simon Brehault, Sire Pierre Garrye, Sire Pierre du Roquer, Sire Johen le Loreur et Sire Henry Payn, Prestres, et chacun d'eux Nottaires et Tabillions Publicqs demourans et residans en la dite Isle de Guernezey, c'est à scauoir, par les raports et témognages de une douzaine de prouddes hõmes de chacune des dictes parousses, des enciens et savans de la dite Ysle.

Premier et principallement: L'Enqueste de la Parouesse de Sainct Pierre Port, jurée et sermentée sur SaintesEvangilles de Dieu par Eulx et par chun d'Eulx corporellemt touchés, et par les auant dits Baillif et Jurez deuement enquisse et examinée par voye de droys, l'un après l'autre, et en la présence des dits Nottaires et Tabellions, dient et raportent par lours consciences sur le péril de la dampnation de lours âmes toutes et chacuns les libertés usages et ancyennes coustumes de ladite Isle de Guernezey avoir ëté vsées tenues et gardées pleynement et paisiblement de tout leur temps et du temps de leurs prédécessours ainsi et en la forme cy apprés declarée.

*Item.* L'Enqueste de la Põuesse de nostre Dame du Chatel, jurée et sermentée enquise et examinée, cõme dessus, dit et raporte toutes et chacunes les choses dessus dictes estre vraies joustes et selon la forme et manière du raport de la dite Enqueste de la Prouesse de St Pre Port.

*Item.* L'Enqueste de Sainct Michiel du Valle, jurée et sermentée enquise et examinée, comme dessus, dit et raporte toutes et chũnes les choses dessus dictes être vraies joustes et selon la forme et manière des raports et relãons des dictes Enquestes de St Pierre Port et de nre De du Chatel.

*Item.* L'Enqueste de la Parouesse de St Samson, jurée et sermentée enquise et examinée, cõme dessus, dit et raporte toutes et chũnes les choses dessus dictes estre vraies joũstes et selon la forme et manière des raports et relãons des dictes Enquestes de Sainct Pierre Port, notre Dame du Chastel, et de Sainct Michiel du Valle.

*Item.* L'Enqueste de la Parouesse de St Martin de la Bellouse, jurée et sermentée enquise et examinée, come dessus, dit et raporte toutes et chũnes les chosses dessus dictes estre vraies joustes et selon la forme et manière des raports et relacons des dites Enquestes

GUERNSEY.

Charles Lefebvre, Esq.

26th September, 1846.

de S$^{t}$ Pierre Port, de notre Dame du Chastel, de S$^{t}$ Michiel du Valle, et de Sainct Samson.

*Item.* L'Enqueste de la Pouesse de Saint Andry, jurée et sermentée enquise et examinée, comme dessus, dit et raporte toutes et chacunes les chosses dessus dictes estre vraies joustes et selon la forme et manière des raports et relācons des dictes Enquestes de S$^{t}$ Pierre Port, de nře Dame du Chastel, de S$^{t}$ Michiel du Valle, de S$^{t}$ Samson, et de S$^{t}$ Martin de la Bellouse.

*Item.* L'Enqueste de la Parouesse de sainct Saulveur, jurée et sermentée enquise et examinée, comme dessus, dit et raporte toutes et chūnes le choses dessus dictes estre vraies joustes et selon la forme et manière des raports et relacons des dessus dictes Enquestes de Sainct Pierre Port, de nostre Dame du Chastel, de S$^{t}$ Michiel du Valle, de S$^{t}$ Samson, de S$^{t}$ Martin de la Bellouse, et de S$^{t}$ Andry.

*Item.* L'Enqueste de la Parouesse de S$^{t}$ Pierre du Bois, jurée et sermentée enquise et examinée, come dessus, dit et raporte toutes et chacunes les choses dessus dictes estre vraies, joustes, et selon les raports et relacons des dessus dictes Enquestes de S$^{t}$ Pierre Port, de nostre Dāe du Chastel, de S$^{t}$ Michiel du Valle, de S$^{t}$ Samson, de S$^{t}$ Martin de la Bellouse, de S$^{t}$ Andry, et de S$^{t}$ Saulveur.

*Item.* L'Enqueste de la Parouesse de la Trinité de la Forest, jurée et sermentée enquise et examinée, cōme dessus, dit et raporte toutes et chūnes les choses dessus dictes etre vraies et joustes et selon les raports et relacons des dessus dictes Enquestes de S$^{t}$ Pierre Port, de notre Dāe du Chastel, de S$^{t}$ Michiel du Valle, de S$^{t}$ Samson, de S$^{t}$ Martin de la Bellouse, de S$^{t}$ Andry, et de S$^{t}$ Pierre du Bois et de S$^{t}$ Saulvour.

*Item.* L'Enqueste de la Parouesse de nostre Dame de Torteval, jurée et sermentée enquise et examinée, comme dessus, dit et raporte toutes et chacunes les choses dessus dictes estre vraies joustes et selon les raports et relacons de dessus dictes Enquestes de S$^{t}$ Pierre Port, de notre Dāe du Chastel, de S$^{t}$ Michiel du Valle, de S$^{t}$ Samson, de S$^{t}$ Martin de la Bellouse, de S$^{t}$ Andry, de Sainct Salvour, de Sainct Pierre du Bois et de la Trinité de la Forest.

Nostre dict Seigneur le Roy fait et ordonne en la dite Isle son Bailliff, ung hōme notable et suffisant, qui soit discret et ressuyant en la dite Isle, et qui puisse et sache respondre, quant mestier seroit, es Justices de nostre dict S$^{r}$ le Roy yllenques de tous cas touchant la Couronne eschaians en la dite Isle, lequel Baillif est juré et sermenté yllenques sur sainctes Evangilles par les dessus dicts Jurez qu'il gardera et mayntiendra bien et loyallem$^{t}$ toutes les libertés vsages et anciennes Coustumes de la ditte Isle de tout son pouvoir, et semblablem$^{t}$ éxécutera et accomplira les Regars Recors et Jugements faits et declarés par les dessus dicts Jurez, et que, si par ignorance ou autrement il faisoit aucune défaute ou trespas à l'encontre, il se raddressera incontinent et tiendra selon redresse par l'Ordonnance et bonne opinion des dicts Jurez, lequel Baillif ne peut faire jugement p' soy sans le regard des dits Jurez; et peut et appercoit iceluy Baillif fieffe et pension annuellem$^{t}$ pour son dit office de notre dict Seigneur le Roy, et tient Court d'Héritage de quinze jours en quinze jours, et de Meubles et Catel huit Jours en huit Jours pour les Ressuyans du pays, et pour Estrangers de jour en jour, ou plus souvent s'y metier est, en la présence de deulx des dit Jurez au tout le moins, et les pleas des Jugements et Records en la présence de sept des dicts Jurez ou de plus, et non aultrem$^{t}$, si cōme yl est contenu et exprimé en la dicte Estente de notre dit S$^{r}$ le Roy.

*Item.* Les habitans et demourans en la dicte Isle, Eux et lours prédécessours, onnt en vsage et d'ancienne accoustumance de faire et eslire de eulx mesmes douze hōmes des plus notables et discrets, sages, loyaulx et riches de la dite Isle, lesquels sont jurés et sermentés yllenques par le Baillif de notre dit S$^{r}$ le Roy, qui pour lors exerce le dit office, sauoir est, que bien et loyallement eux recorderont et jugeront selon leurs consciences tous et chūns les cas et causes queulxconques qui par deuant le dit Baillif et eulx en drois seront determinées, lesquels dessus dicts sont appellez Jurez de la Court notre dit S$^{r}$ le Roy, et sont moyen Juges entre nostre dit S$^{r}$ le Roy et ses hommes habitans en la dite Isle, et ont iceulx la cognoissance, juridiction, précognition et jugemens en la compagnie du dit Baillif de toutes matières de causes ciuilles et criminelles eschéantes en la dite Isle toutesfois et quantes, si cōme il est desclary euidentement en l'Estente de nostre dit S$^{r}$ le Roy (excepté toutes fois que, selon l'ancienne accoustumance de la dite Isle, la pugnition de trois certains cas, s'ils écheyent yllenques, sont reservéz par excellence à la Couronne tant soullement, c'est à sauoir, de cas de trayson, le second est de faulx monyours, et le tiers est de mettre et apposer les mains injuriousem$^{t}$ en la personne du dit Baillif, ou d'aucun des dits Jurez en faisans et exerseans lo$^{r}$ office, desquels cas coynoyssance doit estre cognue yllenques, et la pugnition à la dite Coronne cōme sus est dict): et est à sauoir que yceulx douze Jurez, selon l'établissem$^{t}$ de la Coustume de Normandie, sont mis et ordonnez au non et au lieu de quatre Cheualiers, et servent et doivent servir nostre dict S$^{r}$ le Roy et sa Couronne yllenques à leurs propres Coûtages et dépens, sans prendre ne avoir gauges ny pension pecunyelle de notre dit S$^{r}$ le Roy ne sa dicte Commune (excepté tant seullement qu Eulx doibuent auoir es despens de nōtre dit S$^{r}$ le Roy par chūn an trois disgners à trois pleez capitaulx, sauoir est, à Noel, à Pasques, et à la S$^{t}$ Michiel, et semblablement lour disgner toutes fois et quantes qu'eulx font et espurent les taulx des amendes de la Court de notre dit S$^{r}$ le Roy, et auxi semblablement, quans aucun félon abjure et forjure le pays eulx doivent avoir lour disgner, si cōme yl est contenu et exprimé en la dicte Estente de nōtre dict S$^{r}$ le Roy); et sy tost que aulcun d'iceulx Jurez va de vie à trépassement, l'en y ordonne et met ung autre en son lieu, en la fourme et manière comme dessus est dict, et ne peut et aussy ne doit estre aulcun des dits Jurez mis ou déposé hors d'iceluy Office sa vie durante, sy n'est tant seullem$^{t}$ pour

deux cas; l'un, s'il est à estre mis et pourveu en l'Office du Bailliff yllenques par l'Ordonnance et constitution de notre dit S^r^ le Roy; et l'autre cas sy est de estre reprins et diffamé de son serment: et doiuent auoir yceulx Jurez la plaine cognoissance des coustumes libertez et ancyens vsages de la dite Isle; et toutes fois et quantes que nôtre dit S^r^ le Roy enuoye ou transmet Justice d'assiser yllenques, les dits douze Jurez seront et doivent estre Juges ensemble en la Compagnie des dits Justices de toutes manières de Causes par devant les dites Justices yllenques pretendues et demonstrées, excepté tant seullement des Jugements que yceulx Jurez auront fait paravant, et qui sont replegiez à l'Assize; es queux cas l'en doibt prendre et avoir autres hommes des plus notables et suffisans de la dite Isle qui, en icelle partie et es cas dessus dits, avec les dits Justices jugeront, à scavoir, si yceulx Jurez auront jugy loyallem^t^ et raisonnablem^t^, selon les anciens usages et coustumes de la dite Isle, lesquels Justices en temps aulcun soulloient venir en la dite Isle de trois ans en trois ans, et yllenques et pour lors auoyent la cognoissance de toutes manières de cas replagiez à l'assise, en la forme et manière comme devant est dit, et pour que, selon les Coustumes libertés et anciens usages accoustumés en la dite Isle, iceux-manière d'aplegements, de queulx condition queulx fussent ou peussent être, doiuent point estre determinez hors de la dite Isle, sinon par l'assent de parties litigeuses.

*Item.* Notre dit Sire le Roy commet et ordonne à tels comme il lui plaist la garde, gouvernance et tuÿon de sa dite Isle, et de ses chasteaux et forteresses yllenques; et incontinent et sy tost que eux ont remontré et fait exposer leur Comissions de la dite garde par deuant les dits Bailliff et Jurez, eux sont sermentés et jurez sur sainctes Evangilles par les dits Baillif et Jurez en la fourme et manière quy ensuit, cest à sauoir que, entant cõme en eulx est et que à lour office touche et apartient, eux soustendront, maintendront et garderont bonnement et loyallement les dit chateaux et forteresses en l'obéisance de notre dit S^r^ le Roy, et les dites Communes et habitans de la dite Isle en lour bonne et vraye ligeance, et semblablement en lours libertez vsages et anciennes coustumes; et sy aucunenm^t^ par ignorance ou autrement eulx ou aulcun d'eulx faissoient ou erroient au contraire, que par yceulx auant dits Bailliff et Jurez seroyent radrechiés et reparés, toutes fois et quantes qu' eulx en seroyent premunis et guarnis. Et aussy fait et ordonne notre dit S^r^ le Roy ses autres officiers, ceulx cõme il luy plaist, en ses dits chasteaux et forteresses, lesquels sont jurez et sermentez en la forme et manière comme dessus est declary. Et en outre constitue et ordonne nôtre dit S^r^ le Roy ses autres Officiers de sa Cour Royalle yllenques, c'est à savoir, son Clercq, son Receueur, son Procureur et son Bedel, lesquels prennent et apperceuent annullem^t^ pensions de nostre dit S^r^ le Roy pour lours offices, et semblablement fait et ordonne ses Bordyers et Sergeants, lesquels onnt pour lours offices certaines terres fieffées et anciennem^t^ ordonnées, lesquels officiers sunt sermentés, comme dessus par les avant dit Baillif et Jurez, chũn selon ce que à son Office compete et apartient, et cõme il est de necessité qu' eux soient gens suffisans et dignes de records.

*Item.* Les habitans et demourans en la dite Isle ordonnement et esluyssent de eux mesme un Sergeant, appelé le Prevost du Roy, qui fait les arrests et impeschements, et les delivrances en la dite Isle, et tient veues et baille saisines d'héritage par les regards et commandm^ts^ des dit Baillif et Jurez, et est, souvent fois et plusiours, partie en la Cour de notre dit S^r^ le Roy pour les causes des defaillans et absens, et fait plusiours autres choses aparten^t^ à son dit Office, et doit estre hõme raisonable et suffisant, et prent et appercet annuellem^t^ fieu et pension de nôtre dit S^r^ le Roy à cause de son Office, si cõme il appert et est declary plus playnement en la dite Estente de nr̃e dict S^r^ le Roy.

*Item.* Les dits habitans et demourans en la dite Isle font et ordeinent de eulx mesmes, et de vng de tenants de nôtre dit S^r^ le Roy yllenques, ung officier, appellé le Granger du Roy, lequel Granger leve et assemble et respond es mynistres de nôtre dit S^r^ le Roy en la dite Isle des forments et avoynes deues à nôtre dit S^r^ le Roy sur ses hommes et tenants yllenques, pour lequel Granger dessus dit les dits hommes et tenants de nostre dit S^r^ le Roy doivent et sont tenus respondre et faire bons pour luy, en cas qu'il n'auroit de quoy respondre du tort fait en son Office.

*Item.* Les dits habitans et demourans en la dite Isle hõmes liges de nôtre dit S^r^ le Roy ne sont tenus et auxi ne doiuent estre constraincts ou compellés par aulcun brief de Roy ny autirment pour cause quiconques de yssir ne aller hors de la dict Ysle, sy n'est par assent des parties. La cause pourquoy sy est par une composition de certaine somme de monoye c'est à sauoir la sõme de sexante neuf liures trois soulx et onze deniers tournois, que les dits habitans et demourans en la dite Isle payent illenques par chũn an, annuelle rente es ministres et officiers de nôtre dit S^r^ le Roy, à troys termes par egalles portions. Et fut cette présente composition faite par nr̃e Souverain S^r^ le Roy de Angleterre, Duc de Normandie, qui pour le temps estoit, à ses hõmes et habitans de la dicte Isle, qui pour lors et adoncques remontrerent à nr̃e dit S^r^ le Roy et à son noble et droiturel Conseil, comment la dicte Ysle de Guernezey estoit une Ysle tout par soy enclose de mer de toutes parts loyng des parties de son Royaulme et proes et environnée des terres de lours anemys et adv̄saires, et ovequez ce que les Justices d'assises yllenques transmis et enuoyés par nôtre dit S^r^ le Roy peuvent enquerir et faire pugnition yllenques, en la manière que deuant est dict, des trespas et transgressions faits, et p̃petrés yllenques, jouste et selon les usages de la dite Isle. Et noyent-moins, si nôtre dit S^r^ le Roy vouloit auoir de ses gents habitans et demourants en la dite Isle, soient mariniers vers l'anemy par la mer ou aultres, yl les peut et doit auoir toutes fois et quantes par poyans leurs gages raisonables, non obstant la dite composition de la rente auant dite, laquelle rente est appellée ferme ou ayde de Roy.

GUERNSEY.

Charles Lefebvre, Esq.

September 26th, 1846.

*Item.* Les dits habitans et tenans de nostre dit S^r^ le Roy yllenques doiuent et sunt tenus passer et porter en l'Isle de Jersé le Capitaine d'yllenques, ou son Lieuten^t^, ou aulcun autre Messager de par Nostre dit S^r^ le Roy en un batel ou Nauire de semonce, toutes fois et quantes, à lours propres coustages et depens, excepté que ceulx quy feront yceluy labour doiuent auoir pour chūn viage chinks soulx tournois, vallant deulx gros d'Angleterre, ou lours disgners pour lour trauail, selon ce qu'il a été usé et accoustumé en la dicte Isle dancien temps. Et pour ce que nostre dit S^r^ le Roy, Duc de Normandie, comme dessus est dit, de laquelle Duché la dite Isle de Guernezey est parcelle et dépendance, yl voulut conceda et octroya de sa Royalle Ma^je^ et benigne Grace à ses dits hom̄es et tenans de sa dite Isle, que Eulx usassent, rejoyssent et playnement et paysiblement des libertés usages et anciennes coûtumes dont eulx et lours p'edessessours avoyent jadys et anciennem^t^ usé, par la maniere que deuant est dit, yssir ny aller hors de la dite Ysle par appellation ny aultremt, en maniere quelconque, excepté pour prendre et auoir lours gages de nōtre dit S^r^ le Roy com̄e dessus est dit, pour cause que ancyennement les appellations et applegements de la dite Duché de Normandie estoient et soulloient estre determinés entierem^t^ à l'Esquer à Rouen; sy ne voulut point souffrir Nostre dit S^r^ le Roy, Duc de Normandie, comme dessus est dit, nostre Souverain et liege Seigneur, que jamés ses dits hommes subjects et lieges fussent et deussent estre constraincts et compellez par aulcun bref de Roy, ne aultrem^t^, yssir ne aller hors de la dite ysle, mès accorda et conseda yceluy noble Roy, que tous les cas dessus dits fussent et deussent estre cogneus mis à fin et determinés en la dite Isle par deuant les Justices de Nostre dit Souverain S^r^ le Roy yllecques transmis et mandés avec les douze Jurez de la dicte Isle, quy cognoissent et sayuent les accoustumances et anciens vsages de la dicte Isle.

*Item.* Est accoustumé et vsé d'ancien temps en la dicte Isle, que les dits Baillif et Jurez visitent et survoyent les chasteaux et fortresses de nostre dit S^r^ le Roy yllenques, toutes fois et quantes que necessité et besoing en est, et que le cas le requert jouste, et selon lours bonnes discretions, afin et pour cause que yceulx chasteaux et forteresses soyent et doyent estre bien et suffisament reparés, garnis, fournis et estoffés tant de souldeyers, canons, pouldres de canon, que d'aultres hernois et abillements de guerre à ce propres et necessaires, et tout pour cause de les tenir et garder en la bonne obéissance et subjection de nostre dit S^r^ le Roy; et si ainsin estoit que les dit chasteaux et fortresses ne fussent bien et raisonablment estoffés et garnis, comme dessus est dit, emprés les dites visitation et surveue, yceulx mesme Baillif et Jurez ont accoustumé de charger et faire commandem^t^ exprès de par nôtre dit S^r^ le Roy es capitaines, gardes, et Gouvernors des dites places yllenques, sur lour ligence et einsin com̄e eulx en vouldront respondre devant nostre dit S^r^ le Roy, que à toute haste et possible diligence ylx mettent et fassent mettre promptem^t^ et sans delay les dessus dictes places et fortresses en bonne deue et suffisante reparaōn de toutes manieres d'estoffes et garnisons à ce requises propres et necessaries, comme dessus est declary. Consideré toutesfois que le chastel Cornet quy est la principalle garde et fortresse de la dicte Isle de Guernezey est separé hors d'avecques la dite Isle et enclos environné de mer tout attour, et si ainsin estoit que les anemis et adversaires de nôtre dit S^r^ le Roy veinssent assailler et mettre siège deuant le dit chastel, il ne pouroit estre secouru de ceulx de la dite Isle pour cause de la mer, quy est entre deux. Et la principale cause fut pour ce que aultre fois, deuant ces houres, le dit chatel de Cornet, par la deffaute du captaine quy pour le temps estoit et des abillements et aultres estoffes de guerre à ce propres, requises et necessaires pour resister et obvier contre les ennemis et adversaires de nôtre dit S^r^ le Roy, par force et de fait fut prins et mys es mains et en la dommacōn des dits anemis et adversaires; et par enprès dedans bref et puy de temps fut conquis et remis en la bonne et vroye obeissance de nôtre dit S^r^ le Roy, par la prouesse et bonne diligence des dessus dits liges et habitans de la dite Isle de Guernezey, et partant et pour ycelle cause a voulu concedey et granté nostre dit S^r^ le Roy que tous dies dempuis, et toutes fois et quantes, comme dessus est dit et desclary, les dits chasteaux et fortresses soyent et doyent estre de fait visitees et surveues par les avant dits Bailiff et Jurez, com̄e dessus est dit, laquelle chose a èté, tous dies, et encore est, mayntenue et contynue en celle fourme.

*Item.* Est accoustumé et usé d'ancien temps en la dicte Isle, que len ne peut appeller ne apleger à l'assise de trois cas. Le premier est de fait jugé et escript et seelé soubs le seel de la juridicōn Royalle de la dite Isle. Le second est, de rentes et redevances deues à Saincte Eglise. Et le tiers est de partage d'héritage d'entre frères et soeurs. Et la cause et principalle raison, que si einsin estoit que ycelles dictés trois causes eussent lieu et efficace d'avoir lours cours par manière et forme d'appellation à l'assise et que len le vousist souffrir, jameys hōme lige de nôtre dit S^r^ le Roy en la dite Isle ne pouroit avoer execution ne definiction de cause par voie de droit, si ainsin estoit que parties vousissent debatre à l'encontre, si sur ce nestoit pourveu de remède plus convenable, pour ce que selon les dits anciens vsages du pays les dites assises souloient anciennem^t^ venir en la dite Isle de trois ans en trois ans, com̄e dessus dit et declary.

De laquelle Grace especialle de nôtre dit Souverain S^r^ le Roy, et des libertés, usages, et anciennes coustumes de la dite Isle de Gnernezey, ainsin grantées concedées et vsées en la forme et manière comme dessus dit, les hom̄es liges subgés et habitans en la dite Isle onnt usé et resjoy tous dies plainement et paisiblement d'empuis le conquest d'Angleterre, eux et lours predecessours, et onnt esté toujours dempuis ratefiées et confermées par tous les nobles Rois dudit Roialme d'Angleterre qui dempuis ont esté jusques au jourdui, et gardées et maintenues paisiblem^t^ en tous temps sans contradiction ou impeschement quelconques.

Lesquelles choses et chacunes d'icelles einsin et en la forme et manière com̄e dessus sont

exposées et declaries, Nous avant dit Bailiff et Jurez de la dite Isle de Guernezey, ovesques l'approbation des signes manueulx des Nottaires publiques et Tabellions dessus dicts, et semblablement les raports des loyalles enquestes dessus dictes; certifions et tesmoignons estre vroies par ces présentes. En tesmoins desquelles choses et chacune d'icelles le Seel de la Baillie de la dite Isle de Guernezey, ovesques l'appension des Seaulx des auant dits Bailif et Jurez de la dite Isle et les passemens des dits Nottaires et Tabellions dessus dicts à ces présentes Lettres, est mis et appendu en signe et temognance de verité et de loyaulté. Fait et donné en la dite Ysle de Guernezey, cõme dessus est dict, le deroin jour du mois de Séptembre l'an de Grâce mil quatre-cents quarante-ung, présents à ce Sire Jeahen Revel and Sire Laurens Guyott Prestres, Guille de Beauver, Colin au Petit. et Jehens Perin, avec plusieurs aultres tesmoings dignes de foy appelles et requises es choses dessus dictes.

L'an de Grâce mil quatre cents quatre vingt neuf, le xxx[e] jour du mois de Septembre, Collacion a este foette à l'original par nous, Nicholas Effard, Lieutenant de Johan Blondel, Bailiff de notre Souverain Seignour le Roy d'Angleterre en la dite Isle de Guernezey, présents à ce, Pierre le Marchant, John Martin, Nicolas de Garis, Thomas de Saumarez, James du Port, Simon Ethur, et Michiel de Rozel, Jurez de la Court nostre dit Souverain Seigneur le Roy en la dite Isle, et auons trouué ces présentes accordantes au dit original, sans rien adder en manière quy varie ne change entendment, porquoy nous avons seelé cettes présentes du seel de l'office de la Ballye de la dite Isle, l'an et le jour dessus dicts. Copie tirée et collationnée de la copie de l'original seelée du seau du Bailliage de cette Isle de Guernezey par nous sousignés, Lieutenant Bailly et Jurez de la Cour Royalle de la sudite Isle, ce xxiij[e] Jour du mois de Septembre, l'an mille six-cents quatre-vingts et treize, l'an cinque du Regne de nos Souverains Guillaume et Marie par la Grace de Dieu Roy et Reine d'Angleterre, d'Escosse, France et Irelande, Défenseurs de la foy, &c. En temoignage et verité de quoy le seau du Balliage de la dite Isle à ces présentes est mis et appendu.

(Signed) C. Andros, Lieutenant Bailly; J. De Saumarez; James De Beauvoir; W. Le Marchant; Jean Martin; J. Careye; J. Andros; Nicollas Lohway; Tho. De Lisle; W. Le Marchant; Eleazar Le Marchant.

3799. This appears to be a certificate by the Royal Court of the date of the 30th of Sept. 1441, setting forth certain inquests held in the several parishes of the Island, which find all and every the liberties usages and ancient customs of the Isle of Guernsey held and kept fully and peaceably in all their times and that of their predecessors, stating them to correspond with those approved before the Justices in 5th of Edward III., 1331, and set forth in an Instrument called the Extent.—Yes. The origin of the Précepte d'Assize, as I have always viewed, is this. From the time of Henry III., Edward I., and II., and even in the beginning of the reign of Edward III., Commissioners were sent here. They came every three years when they could; sometimes perhaps not so often. Not knowing the customs and usages of the Island, their decisions were always at fault, and a great number of complaints were made, which were at last gathered together, and Sir Henry Spigurnell and the individuals named in the Précepte d'Assize, were sent, in the 17th of Edward II., to examine into those decisions. They declared them to be of none effect, and that the inhabitants of the Island continued in the enjoyment of their liberties and privileges as fully as before those processes and decisions had taken place. But, as their judgment did not declare what those liberties and privileges were, but only that the inhabitants possessed the right of enjoying them, annulling the old proceedings which had been in opposition to them, that was the origin of the Précepte d'Assize. The Court then set to work to have them laid down and approved by Sir Henry Spigurnell and his associates, and to have them after approved by those different commissions in Eyre named in the instrument just produced. We do not know that they have ever been approved by any higher authority; but we have reason to believe that they became known in England either by this or by some other instrument, because we find them recited individually.

3800. Does the extent date itself?—Yes, it dates itself as being in the reign of Edward III.; " Faicte l'an du Regne du Roy Edward le tiers depuis le conquest cinquieme."

3801. You would not refer to the Extent, would you, for anything touching the rights and privileges of the island?—No; the Extent refers to nothing but the revenues and property of the Crown.

3802. (To. Mr. *Lefebvre.*) Will you give the Commissioners an instance of the form in which the records of criminal proceedings are at present entered, both à l'ordinaire and à l'extraordinaire?—The following is the entry of a case à l'ordinaire; it is the case of Mary Winter, charged with robbery in October, 1845. The first entry is the acte of accusation, and the order to the Crown Officers to prosecute.

*The same is read as follows.*

Marie Winter, fille de Richard, de la ville et paroisse de St. Pierre Port, ayant été produite devant la Cour par le ministère de Mr. Josué Ahier, un des connétables de la ville et paroisse de Saint Pierre Port, étant accusée d'avoir, soit seule ou avec autre son complice ou autres ses complices, le 25[me] Septembre, 1845, ou environ, pris volé et emporté hors d'un appartement dans une maison, apartenant aux héretiers de feu Mr. Pierre Vaudin, et située dans la rue des Cornets en la dite paroisse, le dit appartement occupé par Rachel Du Four, Veuve du Sieur James Hayward et sa famille, un chale de soie noire appartenant à Sophie Hayward, et lequel dit chale a été trouvé dans la possession de la dite Winter. Item d'avoir, le 22[me] Septembre, 1845 ou environ, soit seule ou avec autre son complice ou

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autres ses complices, pris volé et emporté hors d'une maison occupée par le Sieur William Pearce, et située a Vauvert en la dite paroisse, deux verres à boire, Anglicè, "tumblers," appartenant au dit Pearce, qui étaient exposés dans le portail de la dite maison pour être vendu, et lesquels dits verres à boire, Anglicé "tumblers," ont été trouvés dans la possession de la dite Winter; la Cour, après avoir pris par écrit l'interrogatoire de la dite Winter et entendu des témoins dignes de foi, a ordonné qu'elle sera constituée prisonnière dans la prison publiques pour que les officiers de la Reine informent contre elle.

3803. Mr. *Lefebvre.* The second stage of the proceedings is the plea of the accused, and the choice of a counsel to defend her.

*The same is read as follows.*

Les officiers de la Reine prouveront les fins de l'action qu'ils ont contre Marie Winter, fille de Richard, de la ville et paroisse de Saint Pierre Port, prisonnière dans la prison publique, à se voir adjugée à telle peine punition ou châtiment corporel que la Cour trouvera condigne, pour avoir, la dite Winter, soit seule ou avec autre son complice ou autres ses complices, le 25e Septembre, 1845, ou environ, pris volé et emporté hors d'un appartement dans une maison appartenante aux héritiers de feu Mr. Mr. Pierre Vaudin, et située dans la Rue des Cornets en la dite paroisse, le dit appartenante occupé par Rachael Duport veuve du Sieur James Hayward et sa famille, un chale de soie noir appartenant à Sophie Hayward, et le quel dit chale a été trouvé dans la possession de la dite Winter: Item, d'avoir le 22e Septembre, 1845 ou environ, soit seule ou avec autre son complice ou autres ses complices, pris, volé et emporté hors d'une maison occupée par le Sieur William Pearce et située à Vauvert en la dite paroisse deux verres à boire, *Anglicè* "tumblers," appartenante au dit Pearce, qui étaitent exposés dans le portail de la dite maison pour être vendus, et lesquels dits verres à boire, *Anglicè* "tumblers," out été trouvés dans la possession de la dite Winter, le tout à l'infraction des loix, trouble de l'ordre public, et leur payer leurs dépens. Après que la dite Winter a fait niance d'avoir commis le dit crime, et a fait choix de l'avocat Falla pour son conseil."

3804. Mr. *Lefebvre.* The following is the entry of the trial.

*The same was read as follows.*

"Sur l'action des officiers de la Reine contre Marie Winter, fille de Richard, de la ville et paroisse de Saint Pierre Port, prisonnière dans la prison publique a soutenir leur preuve en la cause qu'ils ont contre la dite Marie Winter, à se voir adjugée à telle peine, punition ou châtiment corporel, que la Cour trouvera condigne, pour avoir, la dite Marie Winter, soit seule ou avec autre son complice ou autres ses complices, le 25e Septembre, 1845, ou environ, pris volé et emporté hors d'un appartement dans une maison appartenante aux héritiers de feu M. Pierre Vaudin et située dans la rue des Cornets en la dite paroisse, le dit appartement occupé par Rachel Du Four, veuve du Sieur James Hayward et sa famille, un chale de soie noir appartenant à Sophie Hayward et lequel dit chale a été trouvé dans la possession de la dite Winter. Item, d'avoir le 22e Septembre, 1845, ou environ, soit seule ou avec autre son complice, ou autres ses complices, pris volé et emporté hors d'une maison, occupée par le Sieur William Pearce et située à Vauvert en la dite paroisse, deux verres à boire, *Anglicè* "tumblers," appartenant au dit Pearce, qui étaient exposés dans le portail de la dite maison pour être vendus, et les quels dits verres à boire, *Anglicè* "tumblers," ont été trouvés dans la possession de la dite Winter, le tout à l'infraction des loix, trouble de l'ordre public, et leur payer leurs dépens, aux fins d'acte du 18e Octobre, 1845. Est la dite Winter condamnée à un mois d'imprisonment dans la prison publique, au secret au pain et à l'eau, à trois ans de bannissement hors de ce Baillage, et aux frais, après avoir entendu les témoins des dits officiers de la Reine."

3805. Mr. *Lefebvre.* The next I have is a case à l'extraordinaire. The case of James White, alias Michael Ryan, accused of having feloniously killed a sheep. As in the former case, he is first committed for trial, and the Crown Officers ordered to prosecute.

*The entry was read as follows.*

"James White, alias Michael Ryan, fils de William, de la paroisse de Eastbourne, dans le Comté de Sussex, en Angleterre, ayant été ce jour produit devant la Cour par le ministère de Monsr. Jean Roussel, un des assistans de connétable de la ville et paroisse de St. Pierre Port, étant accusé d'avoir, soit seul ou avec autre son complices ou autres ses complices, le 16me d'Octobre, 1838, ou environ, aux Amballes, en la dite paroisse de Saint Pierre Port, félonieusement tué, pris, volé & emporté une brebis appartenante au Sieur Pierre Waterman, qui était dans un courtil situé aux Amballes, en la dite paroisse de St. Pierre Port, occupé par le dit Pierre Waterman: Item, d'avoir, le dit White, alias Ryan, ou complices, le dit jour 16me Octobre, 1838, ou environ, blessé une autre brebis appartenante au dit Waterman, qui était dans le dit courtil, situé aux Amballes occupé par le dit Waterman. La Cour, après avoir pris par écrit l'interrogatoire du dit White, et entendu des témoins dignes de foi, a ordonné qu'il sera constitué prisonnier dans la prison publique, pour que les Officiers de la Reine informent contre lui."

3806. Mr *Lefebvre.* The following is the entry of the plea and the choice of counsel.

*The same was read as follows.*

"Les Officiers de la Reine prouveront les fins de l'action qu'ils ont contre James White, alias Michael Ryan, fils de William, de la paroisse de Eastbourne, dans la Comté de Sussex en Angleterre, prisonnier dans la prison publique, à se voir adjugé aux peines et punitions imposées par les loix, pour avoir, le dit White, alias Ryan, soit seul ou avec autre son complice ou autres ses complices, le 16me d'Octobre, 1838, ou environ, aux Amballes en la paroisse de St. Pierre Port, félonieusement tué pris, volé et emporté une brebis appartenante au Sieur Pierre Waterman, qui était dans un courtil situé aux Amballes, en la dite paroisse de Saint Pierre Port, occupé par le dit Pierre Waterman. Item, d'avoir, de plus, le dit White, alias Ryan, ou complices, le dit jour 16me Octobre 1838, ou environ, blessé une autre brebis, appartenante au dit Waterman, qui était dans le dit courtil situé aux Amballes, occupé par le dit Waterman, et leur payer leur dépens, après que le dit White, alias Ryan, a fait niance d'avoir commis le dit crime et a fait choix de l'avocat Falla pour son conseil.

3807. Mr. *Lefebvre.* The following is the entry of the trial.

*The same was read as follows.*

"Samedi le dix-sept Novembre mil huit-cent trente-huit; Devant Daniel De Lisle Brock, Ecuyer, Bailiff, présens Jean Guille, Jean Hubert, Jean Le Marchant Ecrs, Messire William Collings, H. O. Carrée, Frederic Mansell, T. W. Gosselin, Thomas Le Retilley et Harry Dobrée Ecuyers, Jurés.

Sur l'action des officiers de la Reine contre James White, alias Michael Ryan, fils de William, de la paroisse de Eastbourne, dans le Compté de Sussex en Angleterre, prisonnier dans la prison publique, à soutenir leur preuve en la cause qu'ils ont contre lui, à se voir adjugé aux peines et punitions imposées par les loix, pour avoir, le dit White, alias Ryan, soit seul ou avec autre son complice ou autres ses complices, le 16me d'Octobre, 1838, ou environ, aux Amballes en la paroisse de St Pierre Port, félonieusement tué, pris, volé et emporté une brebis appartenante au Sieur Pierre Waterman, qui était dans un courtil situé aux Amballes, en la dite paroisse de St Pierre Port, occupé par le dit Waterman: Item, d'avoir de plus, le dit White, alias Ryan, ou complices, le dit Jour 16 d'Octobre, 1838, ou environ, blessé une autre brebis appartenante au dit Waterman, qui était dans le dit courtil situé aux Amballes, occupé par le dit Waterman; et leur payer leurs dépens, aux fins d'Acte du 20me Octobre, 1838. Est le dit White, alias Ryan, condamné à trois mois d'emprisonnement dans la prison publique, dont le premier et le dernier mois seront au secret, au pain et à l'eau, à sept ans de bannissement hors de ce Baillage, et aux fraix, après avoir entendu lecture de la déposition des témoins des dits Officiers de la Reine; et sont tous ses biens meubles et héritages, si aucun a, confisqués au benefice de la Reine ou du Seigneur du Fief à qui droit aura, après les fraix du procès pris sur iceux."

3808. Will you also produce to the Commissioners the earliest entry you can find among the records of a similar nature?—The following of the year 1638 is among the earliest entries which I find complete.

*The same was read as follows.*

"Il est commandé a tous les connestables de cette Isle qu'ils ayent à saisir la personne de Jean Bailleul fils Jacques, là où ils le pourront trouver, et de prendre l'aide de telles personnes qu'il sera requis, et par un mesme commandé à tous maistres de batteaux et autres de cette Isle de ne transporter le dit Bailleul hors de ce dit lieu, et de le saisir, s'il se présente à eux, pour le mener en justice, à peine de punition corporelle à discretion de justice.

3809. Mr. *Lefebvre.* The accused having been arrested is brought before the Court.

*The entry is read as follows.*

Le iiije du mois susdit (Décembre), 1638, devant le dit Sieur Bailly, présent, les Sieurs Jean Fantral et Josias le Marchant, Jurés.

Sur ce que Jean Bailleul, fils Jacques, auroit esté ce jourd'hui présenté en justice par les connestables de la Paroisse de St Sauveur, suivt acte de iiije de ce dit mois décerné contre luy, por divers larcins dont il a esté trouvé saisi, il a esté ordonné à la requeste du Procureur du Roy qu'il sera envoyé prisonnier au chasteau, et permis au dit Procureur s'informer de ses autres faits et larcins, pour y estre par après procédé ainsy que de raison.

Le viij de Décembre, 1638, devant Joan de Quetteville, Ecq., Bailly, présent, les Sieurs Jacques Guille, Jean Blondel, Pierre de Beauvoir des Granges, Josias le Marchant, Pierre de Lisle, Michel de Saumarez, Jean Brehault et Jean Careye, Jurés.

Gratian Martin, plaintif, et Jean Cohu & sa femme, défendant, pour certaines injures que le dit Martin prétend avoir reçu d'eux, sont appointés à preuves respectives.

Jean Bailleul, fils Jacques, et Pierre Le Poitevin, fils Jérémie, prisonniers pour larcins, ce jourd'hui convenus en justice: le dit Bailleul a persisté en sa négation et s'est submis à l'information que les gens du Roy pouront faire contre luy, et le dit Poitevin a aussy persisté en sa précédente confession, sur quoy ils ont été renvoyés prisonniers.

Le Samedy xxix du dit mois, devant le dit Sieur Bailly, présent, Jean Bonamy, &c., Jurés.

Jean Bailleul, fils Jacques, et Pierre de Poitevin, fils Jérémie, prisonniers pour larcins ce jourd'hui convenus en justice; et le dit Bailleul, persistant en sa negation, et le dit Poitevin, en sa confession, ont esté renvoyez prisonniers jusque avoir oui la confrontation des témoignes produits contre le dit Bailleul.

Le Samedy, Cinquiesme Janvier, 1638, devant le dit Sieur Bailly, présent les Sieurs Joan Bonamy, &c., Jurés.

Jean Bailleul, fils Jacques, prisonnier pour larcins, ce jourd'hui convenu en justice, et les témoignes qui ont déposé contre luy confrontés, ouie la conclusion du Procureur du Roy, a esté, pour ses dits larcins et pour la force et violence par lui faitte contre le connestable, adjugé à sept ans de bannissement hors de ce Baillyage et dépendances, et luy est défendu d'y retourner durant le dit temps, n'y d'amonter plus hault que le plein de la marée de Mars, à peine d'estre fouetté par tous les carrefours de cette ville.

Pierre le Poitevin, fils Jérémie, prisonnier pour larcins desquels il est trouvé convaincu par sa propre confession, ouie la conclusion du Procureur du Roy: il a esté adjugé à sept ans de bannissement hors de ce Baillyage et dépendances, et défendu d'y retourner durant le dit temps, et d'amonter plus hault que le plein de la marée de Mars, à peine d'estre fouetté par tous les carrefours de cette Ville.

[Adjourned till Monday next.]

GUERNSEY.

Charles De Jersey, Esq., Procureur de la Reine.

September 28th, 1846.

*Monday, September* 28, 1846.

*Charles De Jersey, Esq., Procureur de la Reine,* further examined.

3810. The Commissioners were inquiring the other day into the power of the Crown Officers to act without the intervention of the Court in certain cases. They understand that, in the case of a supposed libel against a former Governor, the question was argued, but finally the Court ruled that the Crown Officer could do it?—That was before my time. I was not Crown Officer at that time. By my note I find that, on the 1st Oct., 1819, Mr. Henry Brouard, for a libel against the Governor, was actioned, and was obliged to give bail of 100*l.*, that he would answer the criminal action that would be entered against him.

3811. The question is, whether that was a prosecution ordered by the Court or instituted by the Crown Officers without the intervention of the Court?—Here is the order of the Court. "La Cour, après avoir pris par écrit l'interrogatoire du dit Brouard, a ordonné qu'il sera constitué prisonnier dans la prison publique, pour que les officiers du Roi informent contre lui, sauf à lui de donner bonne et suffisante caution de cent livres sterling."

3812. Do your records show that the Acte d'Accusation in any such case is framed at the instance of the Court?—This Acte d'Accusation is made precisely similar to the others. This is the Acte, "Sieur Henri Brouard, éditeur et imprimeur de la Gazette dite, 'The Star or Guernsey Weekly Advertiser,' ayant été ce jourd'huy produit devant la Cour par le ministère de Thomas Guérin Collings, écuyer, connétable de la ville et paroisse de Saint Pierre Port, étant accusé d'avoir, le dit Brouard, soit seul ou avec autre son complice où autres ses complices, méchamment injurié, libellé et diffamé son Excellence, Monsieur le Major Général Bayly, Lieutenant Gouverneur de cette Ile, par l'insertion du libelle suivant dans sa dite Gazette, à la date du 21e Septembre, 1819:"—Then follows the libel: "Le dit libelle tendant à avilir et rendre odieux le dit Monsieur le Lieutenant Gouverneur, au mépris de son authorité, au contempt des loix et trouble de l'ordre public." Then the Interrogatory is taken, and there is the Acte which approves it, which is precisely in the usual form.

3812. Did any argument arise upon it?—I should think not. It might have been argued in this way. After the accusation was entered, when the action came before the Court and Mr. Brouard had chosen his counsel, his counsel might argue that this was an improper way of putting the accusation, as it was properly a cause en adjonction which ought to have been entered in the name of General Bayly et les officiers du Roi joints.

3813. Mr. *MacCulloch.* I believe the Commissioners will find that it was argued, and that the Court admitted the action.

3814. The *Procureur.* I find, on the 11th December, this entry. "La cause des officiers du Roi contre Sieur Henri Brouard, éditeur et imprimeur de la Gazette dite, 'The Star or Guernsey Weekly Advertiser,' à se voir adjuger à telle peine punition ou amende que la Cour trouvera condigne, pour avoir, le dit Brouard, soit seul ou avec autre son complice ou autres ses complices, méchamment injurié libellé et diffamé son Excellence, Monsieur le Major Général Bayly, Lieutenant Gouverneur de cette Ile, par l'insertion du libelle suivant dans sa dite Gazette, à la date du 21e Septembre, 1819," &c. "A été remise après les chefs Plaids de Noël prochain, pour plaider au fonds et entendre la conclusion des officiers du Roi, après que la Cour a jugé que la cause est bien entrée et a réjetté la fin de non recevoir proposé par le dit Brouard."

3815. The decision that the cause was properly entered, was a decision upon the point whether it should be en adjonction or not?—Yes.

3816. Mr. *MacCulloch.* In the case of the Crown Lawyers and De Courcy against Mauger, the point decided was that, if the case be put as a criminal case, it should be by Order of the Court for the Crown officers to inform; and, if put as a cause en adjonction, it ought to conclude à obtenir réparation, &c., and not à se voir adjuger à telle peine, &c.

3817. (*The Acte of Court in De Courcy's case was put in and is as follows:*) "L'action de Maurice de Courcy, Ecr., Capitaine à demie solde du 97e Regiment d'Infanterie, et officiers du Roi joints contre Sieur Nicholas Mauger, imprimeur du Fanal, Gazette de Guernsey, Journal politique et littéraire, *à se voir ajuger à telle peine ou amende que la Cour trouvera condigne,* pour avoir, le dit Mauger, soit seul ou avec autre son complice ou autresses complices, méchamment injurié libellé et diffamé le dit Maurice De Courcy par l'insertion et publication de deux libelles, l'un dans la dite Gazette à la date du 27e November, 1824, dont la teneur suit,"—then follow the libels, "les dits libelles étant en contravention aux loix et tendant à ternir le caractère du dit Maurice De Courcy, et à interrompre la paix et tranquilité publique, et leur payer leur dépens, a été rejettée, *étant irregulière,* et sont le dit Maurice De Courcy et les dits officiers du Roi joints aux fraix."

3818. Mr. *MacCulloch.* The following is the form of an action en adjonction. "A. B. [plaintiff] et officiers de la Reine joints actionnent C. D. à ouir sa plainte et déclaration, d' avoir été, le dit A. B., grièvement libellé ou calomnié, ou battu, ou maltraité" (as the case may be) "par le dit C. D., le dit C. D. ayant," [done so and so], "et le voir en obtenir réparation condigne avec dépens." This shows that the pleadings in Mr. De Courcy's case were irregular in commencing in the form of a cause en adjonction, and concluding in the ordinary form of a criminal prosecution.

3819. (To the *Bailiff.*) Do the States in their elective form do any thing except elect?—No; except in the case of imposing a tax exceeding one penny per quarter, as regulated by the law approved by the Order in Council of the 13th December, 1844.

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Charles De Jersey, Esq., Procureur de la Reine.

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3820. (To the *Procureur.*) What is the length of service of a Douzenier?—A Douzenier is elected for life; but, in the case of every charge publique which is compulsory, a person is entitled to his discharge at the age of sixty.

3821. Under what circumstances must the constable have a prise de corps? We understand that, in the first instance, he arrests on suspicion: within what time is he obliged to bring the party before the Court?—In the first instance, the constable secures the person of the accused. He is obliged to report to the Bailiff and to the Crown lawyers with all convenient speed. That has been understood by some to mean within twenty four hours, and by others within twice twenty four hours. He is obliged to report what he has done, and take their directions.

3822. In the meanwhile, has the constable the accused in his actual custody?—Yes.

3823*a*. Is he confined in the lock-up house?—That is not what we call it. It is a constable's room in the gaol. It is, in fact, the same as a lock-up house in England.

3823*b*. Is a prise de corps necessary?—Technically speaking, the prise de corps is an order which is given by the Court against a witness, for instance, who does not appear. The prevôt is the officer who executes the prise de corps. Then we have a décret de prise de corps; when a person accused of a crime runs away, or conceals himself, the Court pass what is called a décret de prise de corps. That décret de prise de corps orders all officers to seize the accused.

3824. That, of course, would not come into action when the officer begins by seizing the accused?—No; of course not.

3825. Do you think the rule, that a constable ought not to keep a person in arrest more than twenty four or forty eight hours, is generally observed?—I should imagine that, in all serious accusations, it is observed, as far as I know. But, in the event of a constable taking up a man drunk, he is sometimes put in the lock-up house, and when he becomes sober he is let out.

3826. Is that strictly legal?—I can only answer that by saying that, in the case of a man who has not committed any serious crime, but is put in for drunkenness, for example, it has been done, I believe, from time immemorial.

3827. Do you recollect the case of a lad of the name of Long?—Yes.

3828. How long was he kept in confinement?—I think he must have been kept about six days.

3829. That would exceed the time of getting sober?—I think that on the Thursday he was taken by the constable, and let out six days afterwards; that is the impression on my mind.

3830. Is there any action here corresponding to our action for false imprisonment?—For any wrong which is committed in that way, the remedy is a cause en adjonction:

3831. Do you think Long had a remedy in that case by a cause en adjonction against the constable who shut him up?—Yes; there was a cause entered.

3832. A cause en adjonction?—Yes.

3833. Could there have been any purely criminal proceedings against the constable?—I should apprehend that, in that case, if there was a question purely criminal, in which the man imprisoned was admitted as a witness, there are doubts whether he could enter a cause en adjonction for damages.

3834. In the case of a constable doing an act of the kind which has been supposed, could there be a purely criminal proceeding against him?—I should suppose there might be a purely criminal proceeding; but, in that case, there would be no cause en adjonction.

3835. There could not be both?—No. Perhaps I may illustrate it better by stating what is often done. A person is assaulted; the person who has been assaulted may have the matter brought before the Court and disposed of summarily; but, in that case, he receives no part of the fine; or he may enter a cause en adjonction, in which case he may have damages awarded to him.

3836. Is your law such that a constable is liable to a criminal prosecution or an action for keeping a man six days in prison?—Yes; a person who had suffered wrong might have his remedy either by bringing a criminal action, or a cause en adjonction.

3837. Are there any means of bringing such a case before the Court?—If it comes to the knowledge of the Crown lawyers or to the Court that cruelty or oppression has been used, notice would be taken of it. Perhaps I may make myself better understood by supposing a case. A constable, without any cause, puts a person in prison and allows him to remain there eight or ten days. He complains of it; and it comes to the ears of the Crown lawyers: I should consider it their duty to bring the business before the Court. If it came to the ears of the Court that there had been oppression or ill conduct, I think the Court would direct the Crown lawyers to give orders to the constables to have the matter brought before them.

3838. The *Bailiff.* I apprehend, when there has been any misconduct on the part of the constable, the only authorities that can interfere are those who can act judicially. There is no officer authorized to act ministerially in such a case.

3839. (To the *Procureur.*) Do you recollect whether, in Long's case, any notice was taken?—I think not, with the exception of the cause en adjonction.

3840. Probably, if a cause en adjonction were instituted, the Court would think itself relieved from the duty of inquiring into it further?—Yes.

3841. Did you act in Long's case?—Yes; and Mr. Utermark who was then an advocate acted with me. I think Long was nonsuited.

3842. Do you recollect the point on which he was nonsuited?—The witnesses were heard; and it was upon the evidence.

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3843. (To M. *Le Retilley.*) Do you recollect that case?—I have a faint recollection of the case. I believe the facts to be these. Long was lying down in the street during the snow; it was in fact an act of humanity to take him up. When he was taken up, he assaulted the constable and the persons who assisted him, violently. The constable said he had the greatest difficulty in securing him.

3844. Were you on the Bench yourself?—Yes; I was on the Bench on the trial of the cause en adjonction. I am giving to you the statement of the constable. The man was taken up immediately after the police court had broken up; and he was put in gaol to be produced before the Court on the following Thursday, which was a week afterwards.

3845. Mr. *Andros.* The constable, after having taken this person into custody, informed the Procureur. The Procureur, when he was first brought before the Court, could not recollect it; but he afterwards admitted it. He met the Procureur in the street and informed him of his having taken Long into custody, and his having heard that he had a gun in his possession, and had committed an assault upon some person. In such a case, the Procureur would tell him "bring him up the next police day." It happened that the constable on the Wednesday was ill; he had been attended by a surgeon for several days. He wrote to the gaoler to say he was too ill to bring this man before the Court, and that he might let him out. Long was very glad to get out in that way, and was let out. He then brought an action against the constable for having improperly put him into prison, and having kept him there improperly; not for not having brought him before the magistrate. The Court thought he had nothing to complain of. He brought his action en adjonction for damages, not to vindicate the law. The Court thought that he had no action for damages; and, under all the circumstances, the constable having acted bonâ fide, without any malice, and very far from a desire to press hardly upon the man, they would not give him any damages.

3846. Your view is, that, though the constable had technically acted illegally, the Court would not allow the action en adjonction, because they thought there was no mischief done?—Yes; and he had given notice to the Procureur. There was some doubt about the fact; but it afterwards appeared to be so. Technically, no doubt, the constable would be wrong: but, the man having brought his action for damages and for a fine to the Queen, the Court thought there was no ground for damages.

3847. The *Procureur.* Mr. Andros has mentioned, that the constable gave me notice. I do not deny it. I believe this was what passed. He said, he had the man in a cart; that the man had behaved very ill. I happened to pass through the streets; and he told me what he had done, I dare say that is quite correct.

3848. When you speak of the constable keeping the man in his custody twenty four or forty eight hours, does that mean without notice to the Crown Officers?—Yes. Twenty four hours is the time, according to my view.

3849. Are the Commissioners to understand your previous evidence, as to the general practice, to be that, at the end of the twenty four hours, notice is to be given to the Crown Officers, or to the Crown Officers and Court?—Notice must be given to the Bailiff and to the Crown Officers, that a man has been taken up and lodged in the lock-up house under such a charge.

3850. To both the Bailiff and the Crown Officers?—Yes; that is the strict rule.

3851. Supposing you had had formal notice that there was a charge of drunkenness and assault, would the man have been kept in prison till the next Court?—In a case of aggravated assault, I certainly would have told the constable to mention it to the Bailiff; and, if the thing had been a very serious matter, I should have thought myself authorised, subject of course to the Bailiff's opinion, to say that my opinion was that he ought to be brought up the next day the Court met.

3852. For mere drunkenness you hardly would do that, perhaps?—For mere drunkenness the constable puts him in, and, when he is sober, lets him out.

3853. Would you have advised his detention for a week upon any offence so trivial that the constable upon his own authority would be justified in letting him out afterwards?—I think, in that particular case, strictly speaking, the constable ought to have mentioned it to the Crown Officers and to the Bailiff before he let him out.

3854. How could the Bailiff or the Crown Lawyers, after he was once in the hands of justice with a view of being brought up upon a charge, whether trivial or heavy, have authorised the dismissing him altogether?

3855. The *Bailiff.* He is warned to appear the next Court day, Instead of an arrest it becomes a summons. In a great many cases persons are taken up by a constable. They give notice to the Crown Officers and the Bailiff; and it is in the discretion of those functionaries whether they shall be detained in custody till Thursday or not; and that depends upon many circumstances. It depends upon the nature of the offence, the length of time before the next Thursday, and the probability of the man's escaping.

3856. It would be turning the confinement into a summons to appear?—Yes.

3857. With or without bail?—We take no bail in such a case. I should say the three ingredients would be the nature of the offence, the length of time he would be in custody to the next Thursday, and the probability of his appearing or not.

3858. Of course there could be no absolute liberation of the man in any such case?—No.

3859. You do not recognise the arbitrary discretion of the constable either to keep or to dismiss?—I do not negative it; nor do I assert it.

3860. The Commissioners wish rather to know what the particular limits of the

discretion are?—In every case which is reported to me, if it is a trivial case, I say to the constable, "Let the party out and summon him to attend."

3861. As to the law upon the subject, the Commissioners understand you to reserve your opinion?—Yes.

3862. (To the *Procureur*.) You think, do you not, that the constable has no discretion to let a person out of prison after he has once been taken up by him on a criminal charge?—For drunkenness it has always been considered that a constable had the right.

3863. You take drunkenness as a special case, where a constable has a right to imprison a man till he is sober and then let him out. In the case of a charge for any offence, do you think the constable has any such discretionary power?—No.

3864. The *Contrôle*. The only discretion the constable has is, if there is any disorder, he may put a man in gaol for a few hours or for the night. That is the only discretion he has.

3865. The *Bailiff*. That is the only case to which my observation and my doubt applied.

3866. The *Contrôle*. The only correction I would make in the statement made, as to the facts in Long's case, is this. It appeared that this man had struck one blow.

3867. How long before he was taken up?—Immediately before. It was upon that, the coustable was sent for.

3868. Was there any complaint about his having a gun?—No, I think not. He made a blow at the constable when he was taken up; but he did not hit him. The judgment of the Court in the action entered by Long, I find, was in the following form.

3869. "Joseph Long a été adjugé à la folle adjonction et aux fraix en la cause que le dit Long et Officiers de la Reine joints ont contre Mr. George Payne, ci-devant assistant de connétable de la ville et paroisse de St. Pierre Port, à ouir leur plainte et déclaration d'avoir été, le dit Long, grandement maltraité par le dit Payne, au dit nom, le six Mars, 1845, ou environ, le dit Mr. Payne, au dit nom, ayant saisi le dit Long et l'ayant conduit en prison, où il fut enfermé jusqu'au douzième du dit mois et an, et ce sans raisons suffisantes, pendant tout lequel tems le dit Long fut gardé dans un appartement sans feu, à la grande souffrance du dit Long et sans aucune provocation de sa part. Et les voir en obtenir réparation condigne avec dépens aux fins d'Acte du 17e Mai, 1845, après avoir entendu les témoins de part et d'autre." I recollect, on pleading for the plaintiff, I cited the different orders in Council and ordinances of the Court, defining what the powers of the constable were. They were an ordinance of the 4th of October, 1776, an ordinance of September, 1799, and an order in Council of the 24th of May, 1826.

3870. Of how many Jurats did the Court consist?—Of ten Jurats. They were unanimously in favour of a nonsuit, or giving a verdict for the defendant. The main questions were these: First, whether he was properly put into prison at the first; the second point was, whether the formalities required by law had been fulfilled by Mr. Payne, the constable.

3871. Formalities in reference to what?—To the detention. On the first point, the Court ruled that, the man having committed an assault, and being in a state of drunkenness, the constable was justified in putting him in prison. The second point was with regard to the formalities. One or two witnesses proved having seen Mr. Payne speaking to the Procureur on the subject in the street on the very day; and the Court then considered that his having mentioned it to the Procureur relieved Mr. Payne from responsibility. With regard to the case itself, the ground taken by the Court was that, from the facts before them, had the man been kept in prison till the following Thursday and then brought up, according to what had been proved, there would have been sufficient offence proved to subject him to further punishment.

3872. Mr. *Andros*. And that Mr. Payne did not use cruelty, as was stated in the action. The Court were quite satisfied it was quite otherwise.

3873. Though he had been right in taking him up, yet, if he had ill treated him in doing so, that would have been a ground of action?

3874. Mr. *Carré*. Yes.

3875. (To the *Procureur*.) The Commissioners understand that a letter was written to some one directing the liberation of Long.—Yes; the constable wrote to the gaoler stating his illness, and that he could not attend.

3876. Is it the duty of the gaoler to obey the constable?—Yes; the gaoler was acting as the subordinate of the constable, the man being in the lock-up house.

3877. Mr. *Dobrée*. The gaoler and the man who has the key of the lock-up house are, in fact, one and the same person.

3878. (To the *Procureur*.) Generally speaking, are the constables persons occupied in other employments?—Yes: the constables of each parish are generally very respectable persons.

3879. Of what rank should you say?—Gentlemen and merchants. The assistant constables are tradesmen generally. The constable presides at the Douzaine.

3880. Is not there some risk of its happening sometimes that their own personal avocations may embarrass their acting in some particular case by giving them an interest in it one way or the other?—I think, generally speaking, we have had every reason to be satisfied with a great number of assistant constables. In some cases we have certainly had every possible reason to be satisfied.

3881. Mr. Mellish is a gentleman engaged in the shipping trade, is not he?—He is.

3882. Do you recollect the case of an indictment for the murder of a Danish boy?—Yes; Fleckner.

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3883. Mr. Mellish there was the consignee of the ship in which the event occurred; was not he?—I think he was the consignee, or acting in some way on behalf of the owners.

3884. The parties charged on that occasion got away; did not they?

3885. The *Contrôle.* I was counsel for the captain, who was acquitted. There was a complaint originally made to an assistant constable of the name of Sevire. Sevire brought up all the parties to the Court first, without putting any of them in custody. The Court was proceeding upon some civil case; and, while the Court were engaged, the parties got talking together; and Sevire, who had been a master of a vessel himself, and knew something of what goes on on board vessels, was, I suppose, satisfied with the explanations the captain gave him, and the promises of the captain; and the matter never came before the Court at all.

3886. Do you attribute that to Sevire having thought, in his discretion, that he need not detain the accused?—Yes, in consequence of the promises which the captain made him, and also the perfect willingness of the boy to return on board with his master.

3887. Mr. *McCulloch.* I was acting as one of the Crown Officers in the absence of the Procureur; and I recollect the circumstance to be very much as the Contrôle has stated it. I remember Mr. Sevire stating that he had been deceived. On the first occasion, he was satisfied that the boy had not been beaten more severely than masters of vessels were in the habit of beating their apprentices. That was the statement he made; and, in consequence, he took upon himself to tell the boy he had better go on board again.

3888. Mr. *Dobrée.* The whole transaction passed in the paved court in front of this building; and the boy was perfectly willing to return with the captain.

3889. According to the explanation which has been given, Sevire released the prisoner in consequence of being satisfied there had not been anything serious, and that there was no future danger. Do you think that was a discretion legally lodged in the constable?

3890. Mr. *McCulloch.* I understand, in point of fact, that the captain had not been warned to attend, but that a gentleman of the name of Le Couteur, who lived in the neighbourhood, had given information to the constable, and the constable had brought up the boy to the Court house for the purpose of lodging a complaint, rather to take the advice of the Court as to what he was to do, than to lodge a direct charge against the captain. The captain himself was not warned to attend. I recollect that the constable, on going on board again to take the boy back, put the captain on his guard to use the boy better.

3891. Supposing a constable were once in the position of having a complaint to bring before the Court, how far is he understood by your law to be warranted in abandoning it?

3892. Mr. *De Havilland.* As I was six years a constable, perhaps I can give the Commissioners my view of that point. I never considered that I had any discretion after I had reported the case to the Law Officers and to the Bailiff.

3893. Up to that time, suppose A. B. comes to you and says there has been a grievous assault upon me by such a person; take him: what discretion do you think you would have?—I was once called up in the night, between nine and ten o'clock, to go to a public house, about a mile or a mile and a quarter beyond my house, having been informed a man had committed a grievous assault upon his wife, and behaved himself in a most violent manner towards all those who were present. I went there; and I found the wife had taken refuge in her father's or brother's house, about a furlong beyond her own house. She begged of me I would put him in prison: and her family who were there, two or three brothers or brothers in law, joined with her, and begged I would not leave him loose, for that her life was in danger. I took him to prison. I do not recollect exactly the day; but I think it must have been on Monday, or, perhaps, on Sunday night. I took him to prison, and reported accordingly; and I represented how the whole family had begged he might be detained,

3894. Represented to whom?—To the Law Officers or to the Bailiff. I was directed to leave him there, and bring him on the Thursday morning to the Police Court. On the Wednesday evening, the wife came to me and begged I would release him. I represented that not only herself but her relations had wished him to be confined, and that I could not take upon myself to release him. Still she continued to beg me to do so; but I persisted in refusing to let him loose. She replied she was afraid, if he was brought before the Court, she should suffer for it afterwards. I produced him before the Court, the next morning, and stated all that had happened, and how the wife had implored for his release. The Court decided that I might have taken upon myself to release him at the prayer of his wife.

3895. That would not be a question legitimately before the Court at all; would it?—I mentioned it to the Court.

3896. You mean that the Court intimated an opinion of that kind?

3897. *The Bailiff.* There was no Acte of Court of that kind.

3898. Mr. *De Havilland.* The Court intimated an opinion that I might have taken upon myself to release him at the prayer of his wife, at whose prayer in fact I had put him in prison; but I have never released any person after he was in prison, and I had reported the circumstance to the Law Officers.

3899. (To the *Procureur.*) May we take it that, in all complaints, the constable exercises, in the first stage, a discretion as to whether it is a case that he shall bring forward?—I should say that, in all cases of crimes properly so called, the constable has no right to exercise any discretion.

3900. How would you limit the word "crime?"—Cases of robbery and every thing of that kind.

3901. From theft downwards?—Yes. In the event of a person complaining to the constable that he had been beaten by another, and afterwards telling the constable he wished to withdraw his complaint, I think the constable has been considered, at least I have thought so, to have authority to withdraw the complaint.

3902. Mr. *Carré.* That discretion would not be wholly the discretion of the constable; but it would also depend upon the desire of the party complaining.

3903. The *Contrôle.* In many cases, the constable consults the Crown officers and the Bailiff with regard to whether he may do so. The common course is, if a charge is made to the constable, and he has any doubt as to the nature of the charge, or the parties express a desire of withdrawing it, he, generally speaking, obtains the leave of the Bailiff and Crown officers to do so.

3904. Is not that rather in the nature of advice than a sanction?—Yes.

3905. (To the *Procureur.*) Supposing a party persisted in pressing a complaint in some trifling case, would the constable have a right to dismiss it? Take the case of a box on the ear, for instance.—Supposing the box on the ear were not given in a public street, if a party were to ask a constable to bring a man up, I feel very much inclined to say that, as, by our proceeding, there is a cause en adjonction, the constable might say, I do not think it necessary to take up the man. If an assault has been committed in a public street, the matter can be brought forward before the Police Court, or the party can bring it forward by a cause en adjonction.

3906. Would the proceeding for a box on the ear, not in a public street, be exclusively a cause en adjonction?—I think there are many cases where it would be so.

3907. Mr. *Contrôle.* In the case of any charge made to the constable, unless the constable is satisfied that the charge is unfounded, if the party persists in pressing it, I should say the constable is bound to bring it forward. Supposing, for instance, a party charges another with having given him a box on the ear; the constable finds out from the other party there are two respectable persons who were present, and who say there was no box on the ear given, or that it was after serious provocation, or that there had been some petty quarrel between them; the constable might exercise a certain discretion. But, if the charge is made, and the constable sees no particular circumstances connected with the charge, if the party persists, he is bound to bring it forward.

3908. You think he has to a certain extent the power of judging of the facts?—He has the power of inquiring into the truth of them.

3909. And of acting upon his view of the truth?—Yes. If the constable finds that the charge is not founded in truth, I should think he might refuse to take the party up. Then the party may come to the Court and complain of the refusal of the constable to assist him.

3910. The *Procureur.* On reflection, I think the view which the Contrôle takes may be correct. A party brought before the Court, in certain instances, might plead that it was not a matter to be brought before the Court by the constable, as it was a case to be tried en adjonction.

3911. The *Contrôle.* Supposing the case of a box on the ear: A. B. comes to the constable and says, C. D. has given me a box on the ear, and I wish that person to be brought before the Court. In my opinion, a certain discretion lies upon the constable to inquire into the truth of the charge. If he finds no box on the ear has been given, or that it has been given after serious provocation, I consider he would exercise his discretion as to bringing the matter before the Court or not. Unfortunately the whole of this subject is but ill defined.

3912. Do not you think it would be advisable to have it strictly defined?—Certainly; and I believe all constables would be very anxious to have it defined.

3913. Would that remark also apply to a great many other questions connected with the duties of constable?—It would.

3914. In either of the cases which you have supposed, the party aggrieved might say, probably, I am not satisfied with the constable's decision as to the fact?—Yes; and then the Court would hear the whole case.

3915. Mr *Dobrée.* There would be another course, if the constable considered the case too frivolous to take notice of, which would be simply going to another constable, a thing which is constantly done.

3916. Mr. *De Havilland.* There is a point of discretion which sometimes causes difficulty, whether the constable shall take up the person or only warn him to appear at the next Court. In the case I have mentioned, had not the friends of the party so earnestly desired me to put the party in prison, I do not think I should have done so, I should only have warned him. In a case of that kind I have exercised my own discretion.

3917. You do not think it is matter of course that, upon every charge whatever, the constable is bound to arrest the party charged?—No. I think he has a discretion to exercise. There is also the circumstance here that, being a small Island, the parties could not escape out of reach, as they might in a place of larger extent.

3918. The *Procureur.* I think, in every case, where there has been what our law calls a voie de fait, on a complaint made to the constable, he is bound to bring it before the Court.

3919. What do you intend by a voie de fait?—An assault is a voie de fait. An actual commission of an offence.

3920. A blow given or any act of violence really committed?—Yes.

3921. Mr. *Jeremie.* If I cut a man's trees, that is a voie de fait.

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3922. Is that a criminal voie de fait?—Yes. If I went to cut the Procureur's trees, he would bring me up for a criminal offence; and, if it was done in the night, I should be subjected to imprisonment during a certain number of days, au secret au pain et à l'eau.

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Mr. *John Farrel* examined.

Mr. John Farrel.

3923. Do you recollect the case of a man of the name of Flinn, for whom a reward was offered?—Yes.

3924. Did you try to get at him?—Yes.

3925. Did you know the man, as you thought?—I did.

3926. Whom did you apply to?—I inquired for the constable; and I was shown where Mr. Payne lived.

3927. Did you request him to arrest the person?—I said to Payne, I saw a man that I thought ran away from Dublin with some treasure of the Corporation. I said, there is a reward offered for him.

3928. What was Mr. Payne's answer?—Mr. Payne told me: I will arrest him, if you will give me half the reward if you get it.

3929. What did you say upon that?—I told him he should be paid for his trouble. So then he kept me in his house for about half an hour till he dressed himself; and he said he would come along with me till I pointed the man out to him. I said, "when I point him out to you, you arrest him." He said, "yes."

3930. Did you point him out?—Yes.

3931. The man whom you believed to be the person?—Yes. We walked along behind the man; I thought, every moment, he would arrest him.

3932. What was done?—When I saw him go too far, I said, "Mr. Payne, are not you going to arrest this man?" "No," he said, "I will not." Says I, "if you do not, I will." Says he, "that is more than you dare do; if you lay a hand upon him, I must protect him from you." Says I, "that is not the law in England or in Ireland." He said, "that is the case here." We walked on till we found out where the man lived; said he, "I think I have known him this three months in the Island." He told me then to come down from barracks at two o'clock that day, and that he would get an order from the Court to have him arrested. I did do so; but he did not get him taken. The next morning he told me to be down at the Royal Court at ten o'clock, I think.

3933. How long ago is this?—Last spring, I think.

3934. In 1845 or 1846?—I think it was the last spring. When I came down, that morning, he brought me into a private room, where there were about six or seven gentlemen.

3935. Do you recollect who sat in the chair?—No; I do not recollect, because I was in a great hurry at the time, and I did not take much notice. I stated to the gentlemen that I knew the man for a long time, both himself and his father; that he was a very respectable brewer, in Bishop Street, in Dublin; and I told them, if there was a man in existence, that was the man.

3936. What was the reward offered?—There was a report after he went out of Ireland that it was 500*l*. Afterwards it was reduced to 100*l*.

3937. What was Flinn charged with?—He was City Treasurer of Dublin; and it was reported, when he went away, that he had taken away 14,000*l*. from the corporation.

3938. Did you tell the Court you were certain he was the man?—Yes. I said, if there was a man in existence, that was the man.

3939. What passed next?—There was not a gentleman present that had heard of the circumstances. I said, "any one that has been in the habit of reading the public papers must have heard of it." They had heard nothing about it; there was some obstacle thrown in the way, so that I did not bother myself any more about it. They cautioned me, and said, I might lose my situation; that the man might bring damages against me.

3940. What has become of Flinn?—The next day he made an escape from a far part of the Island in a small boat and left.

3941. There it ended, I suppose?—It ended there. I was in a great hurry at the time; and I could not look after it. Mr. Payne told me that the man could not make his escape out of the Island; that there would be a letter sent to each of the Police of the Island. After leaving the Royal Court, I went to Mr. Payne's house for me to give him directions where to write. I was to give him the direction. When I went to his place, he was not there at all.

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Mr. *George Payne* examined:

Mr. George Payne.

3942. Have you heard what has been stated?—Yes.

3943. What are you, besides being Constable?—I am a confectioner.

3944. Are you a native of Guernsey?—No; I am a native of Canterbury.

3945. Are you Constable, or Assistant Constable?—I was Assistant Constable; I am not at present.

3946. Has Flinn gone from the island?—Yes; to the best of my belief, he has.

3947. Mr. Farrel says, when he first asked you to arrest him, you said you must have half the reward?—There is a little error there. He came to me in a great hurry, and told me there was a reward; and he said, of course, as I was the acting party, I should go shares with him.

3948. He proposed your going shares with him?—Yes.

3949. Did you assent to that?—I did not ask him for it. He came in a great hurry to me; and those words came out at once. It was part of the observation he made to me at first. Of course, I felt it my duty to go out with him.

3950. You had to dress, had not you?—Yes.

3951. His account of the matter is, that he desired you to arrest the man when he pointed him out, and you said you would.—I said I should go out with him. It is quite clear I should not promise to arrest the man, unless I knew the circumstances.

3952. Did he tell you that he knew him?—He said, he would not swear to him. He told the Court so; and that was the reason the Court would not take any steps.

3953. Did you hear him tell the Court so?—Yes.

3954. Did he point out somebody as the man?—I went with him to the Catholic Chapel; and there we remained about a quarter of an hour, till the service was over; and he then pointed out to me a gentleman in company with a lady whom I had seen in the Island three or four months.

3955. Do you know whether that was Flinn?—No more than that.

3956. Is that the man who has now disappeared?—That is the man who left the Island at the time he states.

3957. How long had you known this gentleman?—About three or four months I think: it might have been more; I do not think it was less.

3958. He left in this sudden way afterwards, did he?—I think I heard so. I have no knowledge how he left the Island. I do not think I saw him after that day. I requested Sergeant Farrel to keep it a secret, because there would be plenty of time to apprehend the man after getting further information about him; but he buzzed it about to everybody; and every one I met returning from this Catholic Chapel appeared to know all the story.

3959. Your reason for not arresting him was that you wished to be sure before you ran the risk?—Yes. I would not run the risk of apprehending the man for a crime committed in Ireland, till I was sure that he was the right person.

3960. Did you tell Farrel, if he arrested Flinn, you would protect Flinn?—I proceeded as far as Pollet Street; and Farrel said, "Are not you going to seize him?" I said, "No, inasmuch as I do not think I should be justified in doing so." He said, "Well, if you do not, I will." I said, "If you do, and cause any disturbance in the street, I must be compelled to oblige you to let the man have his liberty."

3961. Did you ascertain where he lived?—Yes; we followed him at some distance.

3962. Is that all that passed that day?—No. We parted on my telling him that, if he came down at two o'clock, I would inform him whether I could take any steps in the matter. In the meantime, I called on the Procureur, who, it being Sunday, accompanied me to the Lieutenant Bailiff's house. I stated the affair to the Lieutenant Bailiff and to the Procureur, who were of opinion I had acted right in not apprehending the man, as Farrel was not sufficiently sure of the man to take his oath. The offence not being committed in the Island, we are, of course, very particular in taking any information, because we are responsible for our acts as Constables; we have no person to look to. If I imprison a man illegally I should be subject to an action for damages, as I was in Long's case. The Court authorized me to bring the matter forward the next morning at ten o'clock.

3963. Who was Bailiff then?—The late Mr. Guille.

3964. Was it spring of last year, or of this year?—The spring of last year. I was out of office in the spring of this year. Sergeant Farrel attended Court that day; he said, he believed that to be the man, but he should decline swearing to him. I wrote by that night's post to Dublin.

3965. How did you get the direction?—Sergeant Farrel left it at my house, as I requested him to do. The answer I had back was that the sureties had made good the amount, and that the reward had been cancelled six months before I wrote.

3966. The reward had not been offered by the Crown, but by the Corporation?—Yes.

3967. The points upon which you and Farrel differ are two. First of all, you differ as to you being the person who suggested your going shares; and the other point is, you deny his speaking positively to the man.—Yes.

3968. When he was before the Court, do you recollect his saying, if there is a man in existence, that is the man?—He was very sure of the man. There was something said about his coming down again. He said his time would not allow him, that he might be broke for neglecting his duty. It did not come from the Court, but from him.

3969. Did the Court give him any caution about the scrape he would be in, if he was wrong?—No.

3970. Was anything said about damages?—I have some recollection that the Court told him that, if I had acted as hastily as he wished me to have done, I should have been responsible.

3971. Did Farrel exhibit the advertisement or proclamation of the reward?—No.

3972. (To the *Procureur.*) Is it the law here, if a Constable has information that a person has committed a crime, and he turns out to be mistaken, that, if he acts bonâ fide, he is responsible?—Not if he has sufficient reason for it.

3973. In England there are two questions. First, whether the arrest is malicious, and then, whether there is a reasonable cause. Supposing the cause is not very reasonable but the arrest not malicious, would the Constable be responsible?—I should think not. The Commissioners are perfectly well aware that this crime was committed out of the jurisdiction. Our mode of proceeding here is this. Supposing a felony to be committed

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in England, an English Policeman comes here with a Magistrate's warrant. The person against whom he has a warrant must be identified before the Court. On his being identified, the Court makes an acte and orders him to be detained, a certain time, till an Order in Council comes to take him away out of the Island.

3974. Mr. *Payne.* With respect to Sergeant Farrel offering me half the reward; if he had done so, or if I asked for half the reward, and if Sergeant Farrel had shewn me the man, it is very probable I should have been likely to have seized him.

3975. (To Mr. *Farrel.*) Mr. Payne says, that you said you could not swear to him?—I was very positive of the man. When I saw him I pointed out the man; and, when he was not willing to arrest him, I proffered myself to arrest him.

3976. Did you tell him you could not swear to the man?—I never spoke a word about it, except in that room when I was cautioned about the damages.

3977. Did any thing pass with Mr. Payne about your swearing to him?—No.

3978. Did you never say to Mr. Payne that you could not swear to the man?—No; not to Payne. I said it inside, when I was cautioned about the damages. "Oh," said I, "I will swear this, if there is a man in existence that is the man."

3979. Did you say to the Court, you would not swear to him, but that you were sure it was the man?—Yes.

3980. Why would not you swear to him, if you were positive?—I was afraid, when I was cautioned. When I saw there was such a responsibility in taking the man, I should not like to get myself into trouble, being a military man; and I said, I would let the thing drop, and have nothing more to do with it.

3981. Are you quite positive that the only place where you said you would not swear to him was in the Court?—In the private room.

3982. No where else?—No. I never told Mr. Payne a word about it.

3983. (To Mr. *Payne.*) Do you persist in saying that he did tell you so?—Yes.

3984. You are positive that Farrel told you he could not swear to the man?—Yes; it was on the Sunday he told me that. I should wish to make a remark on another subject. I was called on New Year's Day, 1844, in the evening, by a gentleman of the name of Clementson, saying, that a man and his wife had been seriously ill used by some soldiers on the highway. I immediately went out; and, at the bottom of High Street, there were some men bringing down the man.

3985. Bringing down whom?—Bringing down the man who had been ill used, of the name of Clarke. I knew the man. He was saturated with blood, and could scarcely speak. The doctor considered his life in danger several days after that. A young man in the crowd told me he could identify the soldiers who had assaulted him. I took him to the fort. The sergeant of the guard shewed me some men in the black hole, who had just come in.

3986. That is a place of confinement in the garrison, is it?—Yes, just under the archway. The young man pointed me out three of them as the persons who had attacked this man Clarke.

3987. Did he say he had been present himself?—Yes; Arthur Keys was the young man's name; the men were taken into the square, and the major was called. I made my complaint to the major, who told me I could either take the men down, or he would be responsible for their appearance at Court the next day. I told him I had left the man in High Street in such a state that I did not think myself justified in leaving the men behind. I took the men down, and lodged them in gaol. They had been very unruly at the fort, and had struck the young man who was with me a violent blow. The sergeant advised me, and furnished me with handcuffs to handcuff them; there was a little difference occurred then. The corporal, who came down with the men forgot to bring the key of the handcuffs, and the men were obliged to be confined in gaol with the handcuffs on.

3988. The corporal came down with you, did he?—Yes, with a file of men. The gaoler told him, if he would bring down the key, he would release them immediately.

3989. Did all three remain handcuffed?—No; I had the key of two of the handcuffs, but not the third. The corporal was told, if he would bring down the key of the handcuffs of the other man, they would be taken off immediately. He did not bring them down that night, so that the man remained in handcuffs the whole night. The Lieutenant-Governor complained that I had insulted a gentleman holding Her Majesty's commission, by not taking bail for those men.

3990, *a.* Did the Court hear the complaint?—No.

3990, *b.* The constable has no power to take bail, has he?—No, none whatever. He did me a great deal of injury among the depôt; for all the officers withdrew their custom from me.

3991. What did the Court say to the complaint?—I do not believe that they entertained the complaint.

3992. (To the *Procureur.*) Has the constable any power of taking bail?—No.

3993. The *Contrôle.* Mr. Payne, when the charge was made in this case, had to use his own discretion as to taking the officer's word or apprehending the men immediately. If in doubt, he ought to have asked advice. Bail, properly so called, of course, is only given to the Court.

3994. (To Mr. *Payne.*) Probably the complaint against you was your not taking the officer's word?—He complained that I had insulted gentlemen holding Her Majesty's Commission, by not taking their bail.

3995. Was not the supposed insult to the major, who gave his word that the men would

be forthcoming?—Yes. I could not leave the men behind. I did not know but I should find the person dead when I got back. My particular object, in taking down the soldiers that night, was that they should not have any correspondence with each other, or plan anything by which they might defeat the ends of justice. When we apprehend persons on a charge, we put them in prison in separate cells, that they may not concoct a story together.

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*John De Havilland Utermarck, Esq., Contrôle de la Reine,* further examined.

John De Havilland Utermarck, Esq., Contrôle de la Reine.

3996. Does the constable keep any books in which are entered the charges which are made to him?—No. At least he keeps no official books.

3997. It is no part of his duty to keep any books in which the charges made to him are entered?—When a person is put into prison that is entered.

3998. It would be entered probably in the prison books?—In a book kept for the purpose.

3999. Have you regulations sent by the Secretary of State for the regulation of your gaol here?

4000. Mr. *Andros.* The English gaols are under the management of the Secretary of State; but that does not extend to Guernsey.

4001. (To the *Contrôle.*) You are aware, probably, that the States of Jersey drew up some regulations, in conformity with the Act in England, which were submitted to the Privy Council.

4002. Yes. There is an order of the Court here on the subject of the prison. Some regulations are very much wanted. Some time ago a committee was named by the Court of Chief Pleas here, for the purpose of drawing up some regulations.

4003. Mr. *Lefebvre* (Greffier.) About ten years ago, an inspector of prisons came over and inspected the state of the gaol, and he made a report to the Secretary of State; but, since that, no further notice has been taken of the matter. It was at the time that Mr. Daniel De Lisle Brock was Bailiff.

4004. You have no Order of Council on the subject, such as they have in Jersey?—No.

4005. (To the *Contrôle.*) Is it part of the duty of the constable to send from the island people who are in a destitute condition?—People who are chargeable to the parish.

4006. Is that under an Ordonnance, or whence is the constable's power derived in that case?—There are a great many Ordonnances bearing upon the subject. They are scattered about and have not been properly collected. The Ordonnance in force now is that of the 30th of April, 1821. The effect of the practice is that the constables of their own authority order persons out of the Island.

*The following passage from the Ordonnance of April 30th, 1821, was read.*

4007. Art. 17. "Les connétables doivent garder, dans un livre pour cet effet, une liste correcte des étrangers, qui arrivent et qui demeurent dans leurs paroisses respectives, et ils doivent veiller surtout, avec les autres officiers publics, qu'il ne s'y en établisse point qui soient gens de mauvaise vie, ou sans moyens sans aveu et sans industrie. Les personnes de mauvaise conduite, les ivrognes, les fainéants ne doivent point trouver grâce dans leur paroisses, particulièrement dans le commencement de leur séjour. Et les connétables sont autorisés d'office à les faire sortir du pays, en les signifiant toutefois qu'ils sont libres d'appeler à la Cour de l'ordre que leur en donnent les connétables. Et il est du devoir des officiers publics de sévir contre les personnes de cette description, pour les empêcher de se fixer dans le pays, avec autant de rigidité qu'il est de leur devoir de montrer de l'indulgence pour les personnes qui après une residence plus ou moins longue ont fait preuve constante de bonne conduite et d'industrie."

4008. The constable's first duty, in the passage read from the Ordonnance, is stated to be to keep a list of the persons who arrive in their respective parishes. Is such a book generally kept?—I cannot give you any information upon that point.

4009. Mr. *Metivier.* A book is kept at the constable's office of every stranger arriving. The masters of vessels bringing passengers send in a list to the Governor, and another to the police officers. That is entered in a book.

4010. One list of persons is sent to the Governor, and another to the police officers of the town of St. Peter Port?—Yes.

4011. (The *Contrôle.*) There is a special Ordonnance to that effect, which is embodied in the Harbour Ordonnance of the 19th January, 1846, Art. 2, by which all masters of vessels are bound, under a penalty, to give in a list of all persons arriving in the Island.

4012. This Ordonnance to which you have referred goes further than that. In case of a person disembarking in the country parishes, his name ought to be entered in a book kept there. Is that done?—I should think not very strictly.

4013 *a.* Mr. *De Havilland.* I was but a short time the principal constable, so that I had not the keeping of the book; but there is such a book kept.

4013 *b.* (To the *Contrôle.*) The next thing they have to do appears to be to take care that people of bad life or without means do not establish themselves in the parish. That is part of the constable's duty, is it?—Yes.

4014. The Ordonnance goes on to say that people of bad conduct, drunkards and ill conducted persons shall find no favour, particularly at the beginning of their residence; and the constables are authorized by their office to send them out of the country, informing them, at the same time, that they are free to appeal to the Court from the order.—Yes.

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4015. And that it is the duty of the public officers to act with severity against people of this description, to prevent their fixing themselves in the country?—Yes.

4016. And to show indulgence to persons who, after a residence more or less long, have given proof of good conduct and industrious habits?—Yes.

4017. This Ordonnance, therefore, gives considerable discretion to the constable?—Yes. But I understand that, in practice, the constables do not exercise that power to any extent, except in cases of strangers who become chargeable to the parish. With regard to disorderly persons, I conceive that they would invariably bring the parties before the Court, and not exert this power of their own authority.

4018. It would appear from this that, before sending them away, the constables are to give them notice that they have power to appeal to the Court against the order of the constable. Are you aware whether in practice that information is always given to them?—I believe that it is in practice given. I cannot say whether it is always done. I have known parties come before the Court and complain of an order of the kind.

4019. Are such applications to the Court frequent?—No, they are not.

4020. In strict law, drunkenness would be a cause of removal, would not it?—I conceive so by the construction of this ordonnance.

4021. With an appeal to the Court?—Yes.

4022. Mr. *De Havilland.* That is confined to the chief constable.

4023. (The *Contrôle.*) I have understood that the assistant constables do exercise this discretion. It may be that I am wrong.

4024. (To Mr. *Metivier.*) Is it your opinion that it is confined to the chief constable?—In law, it is confined to the chief constable. While I was constable, it never was the practice. If the chief constable think a person ought to be sent out of the Island, he looks in the book, and sees when the man came, and by what vessel he came, and then, if he sees cause, he gives him a pass, entitling him to a free passage. The only limitation is that, if it be within a year and a day of his arrival, the master of the vessel that brought him is obliged to take him back at his own expense.

4025. The *Contrôle.* That was formerly the law; it is not so now.

4026. What is the modern law?—I understand that, after a fortnight, the master of the vessel is not considered any longer responsible. He is bound to report him, under penalty; and, till the man had been reported, the master of the vessel would be answerable of course.

4027. Where is the Ordonnance imposing this specific duty upon the master?—I think is is an Ordonnance embodied in the Harbour Ordonnance. The Ordonnance itself I think is the 23rd of November, 1844.

4028. The Ordonnance, now in force, confines the responsibility of the master of a vessel to a fortnight, does it?—Yes.

4029. Do you hold that to be among the Ordonnances which the Court of Chief Pleas has power to pass themselves?—The Court have passed this aux Chefs Plaids: and, from time immemorial, they have legislated upon similar subjects. I see that the whole subject is contained in the ordonnance of 1821. Article 14 limits the obligation of a master to a fortnight.

*The Article was read as follows.*

4030. " Les maîtres de navires qui apportent un étranger dans cette Ile sont tenus d'en donner avis au connétables de la paroisse où ils débarquent, dans les vingt quatre heures après leur arrivée, spécifiant le nom de l'étranger, son état ou sa profession, et le port dont il est venu, sur la peine de trois Livres Tournois d'amende et d'être tenu ci-après de tous les fraix et de maintien ou autrement qu'aurait encouru le dit étranger envers les officiers publics dans aucune des paroisses de cette Ile, et ce, pendant an et jour de son arrivée. Et dans le cas où le dit étranger viendrait à charge aux officiers publics dans le courant de quinze jours après son arrivée, le maître de navire qui l'a apportè sera tenu de le transporter hors de cette Ile, malgré qu'il ait donné connaissance aux connétables de son arrivée."

4031. How is this Ordonnance carried into effect? What is the actual mode in which the party is sent from the country?—Supposing a person to become chargeable, the constable would ask him where he wishes to go. Supposing the person to mention a place and to acquiesce in the constable's order, the constable would give him a pass by the first vessel leaving for his destination, or the nearest place to it. Supposing the person to name no place, or to refuse to leave the Island, the constable would then bring him before the Court.

4032. If the party named St. Petersburgh, for instance?—I suppose he would be sent to Southampton. In a case of a difficulty of that kind, he is generally sent where he came from.

4033. Supposing he came from Yarmouth; what would happen then?—He would be sent by a vessel that would be going nearest to Yarmouth. If there happened to be a sailing vessel going still nearer than a steamer, he would be sent by that.

4034. Mr. *Dobrée.* The Contrôle said that, in case of an individual wishing to go to St. Petersburgh, he would be sent to Southampton. I wish to mention that, when I was constable, in the case of foreigners, such as Russians or Danes, I have known the police go to the expense of paying as much as fifteen shillings or more to enable a person to go to London, where he would have constant opportunities to go to all foreign parts, rather than to Southampton.

4035. You send all foreigners, therefore, of all sorts and descriptions to England, thinking that from England they will find their way to their respective countries?—Yes: the

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the Consuls of their respective nations are bound to provide for them when they get to London.

4036. The *Contrôle.* I think it is right to qualify what Mr. Dobrée has said. I conceive, whatever the nation of a person may be, if he arrives here from England, he would be sent to England; but, supposing a foreigner to be here who had come by a foreign vessel, a Dane for instance, I do not consider, in such a case as that, the constable would feel himself authorized to send him to Southampton.

4037. Mr. Dobrée stated that the practice was to send a Russian or a Dane to England because there was a facility for his returning to his own country.—If a man wishes to be sent to a particular place, he is always sent there.

4038. Supposing a person wished to go to Madeira?—Then he would be sent to Southampton.

4039. You think you are not bound to send a man to his actual country, but you would send him as near as possible to the place from which he came?—Yes.

4040. Mr. *Dobrée.* In the appendix to Duncan's *History of Guernsey,* page 567, we find a letter from the late Bailiff, Mr. Daniel De Lisle Brock, to Lord Normanby on this subject, in which he goes very fully into it.

4041. The *Contrôle.* I believe, with regard to foreigners, the consuls are generally consulted. They act in concert with the constables.

4042. Have you consuls here from all nations?—We have consuls from most nations. There are very few foreigners that come here, except by foreign vessels; and then they take them back.

4043. What fixes chargeability upon a person?—Requiring relief; going for relief and obtaining relief, or being in such a position that the constable thinks it necessary to relieve him and does relieve him.

4044. Have you any lists of the number of persons sent from the Island in this way?—I presume lists of that kind are kept by the constables: but, upon those points, the constables themselves would give the Commissioners better information than I can.

4045. Mr. Mellish is the constable of the town, is not he?—He was the constable of the town. Mr. Ahier, whose year of service expired a very short time ago, I should think, would give the best information.

4046. Mr. *Dobrée.* The number sent away depends upon the activity and zeal of the constable of the day. I do not know what may be the smallest number: but I have known from 250 to 300 sent home in the course of a year. I think when I was constable there were 250.

4047. In what year was that?—That was the year after the cholera; 1833 I think.

4048. Were all those people chargeable here?—Yes. They were people that came to my office and said, "I cannot find any work here, you must find me work or give me relief." Perhaps not a tenth part of those persons were sent forcibly; but they were people who came to me in the way I have mentioned. Mr. Mellish also, in his year of office, was a very active constable, and sent out a great many.

4049. Mr. *Mellish.* I have sent as many as 400 or 450 in my time. Twenty three came by one vessel; and I sent seventeen of them back by the next.

4050. The instruction to the constable, in this Ordonnance, is that he is to show greater indulgence to persons who, after residence more or less long, have given proof of constant good conduct. Does that apply also to persons chargeable, or, as soon as a person is chargeable, is he removed as a matter of course? Suppose a person who had resided in the island five or six years, and conducted himself properly, were to fall into a position rendering it necessary for him to ask relief, would he render himself liable to be sent out of the country?—That power is not exercised in the case of a man who from accident is reduced in that way. He would not be sent away.

4051. The words of the Ordonnance would almost appear to give a right to such parties to maintenance. It is said to be the duty of the officer to show indulgence to such persons.—Yes. We think we have a right to relieve parties in that way, when the distress arises from accident or casual illness.

4052. The *Bailiff.* The relief given to strangers probably amounts to about 800*l.* a-year. That, of course, includes the expenses of removal, as well as the expenses of maintenance.

4053. The *Contrôle.* There is partial relief administered, during the winter, to all persons indiscriminately, which, of course, would not come under the head of chargeability. During severe seasons, there are distributions of soup and coals made to the poor indiscriminately. Applying for that kind of relief does not constitute chargeability. It is given gratuitously upon application.

4054. Mr. *Dobrée.* I hold in my hand a paper which I drew up a short time ago for my own guidance. It includes the amount of relief given to stranger poor, and also the cost of coals and soup, which in the winter time are issued gratuitously by the Police to all applicants, both strangers and natives. The amount of gratuitous charity was—

| | £. |
|---|---|
| In the year 1834 | 348 |
| „ 1835 | 283 |
| „ 1836 | 362 |
| „ 1837 | 323 |
| „ 1838 | 446 |
| „ 1839 | 731 |
| „ 1840 | 746 |
| „ 1842 | 761 |

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The reason why there is no return for 1841 is, that the constable's accounts were thrown one into another during the years 1839, 1840 and 1842. There were four constables in those three years: therefore the three last sums must be divided by four. I can also supply from this list a separate return of the sums paid for the passages of strangers, including both English and foreigners.

4055. *The statement was read as follows:—*

TABLE of the Sums paid by the Parish of St. Peter Port, for the Maintenance and Relief of Stranger Paupers, including Coals and Soup, from 1834 to 1842, both inclusive.

| Date. Constables. | 12 Mo. Dobrée. 1834. | 1835. | | 1836. | | 1837. | | 1838. | | 1839. | | 1840 to Dec. 1841. | | 1842. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 6 Months. Naftel. | 8 Months. Carey. | 7 Months. Guerin. | 8 Months. T. Tupper. | 8 Months. Moullin. | 4 Months. Lihou. | 8 Months. Putron. | 8 Months. C. Tupper. | 6 Months. Jones. | 11 Months. Moullin. | 6 Months. Metivier. | 8 Months. Brock. | 5 Months. Priaulx. | 7 Months. Collings. |
| | £. | £. | £. | £. | | £. | £. | £. | £. | £. | £. | £. | £. | £. | £. |
| To the Hospital . . . . | 252 | 82 | 133 | 101 | 152 | 97 | 67 | 112 | 210 | 135 | 244 | 151 | 238 | 168 | 229 |
| Out-door Relief . . . . | 52 | 20 | 10 | 21 | 51 | 70 | 36 | 78 | 99 | 72 | 207 | 92 | 180 | 97 | 145 |
| Passages to England, &c. . | 44 | 27 | 11 | 7 | 30 | 36 | 17 | 11 | 36 | 35 | 38 | 48 | 37 | 73 | 49 |
| | | 129 | 154 | 129 | 233 | 203 | 120 | 101 | 345 | 242 | 489 | 291 | 455 | 338 | 423 |
| | 348 | 283 | | 362 | | 323 | | 446 | | 731 | | 746 | | 761 | |
| Soup . . . . . | .. | .. | .. | .. | .. | 183 | 38 | 105 | 51 | .. | 40 | 54 | .. | 32 | 32 |
| Coals . . . . . | .. | .. | .. | .. | .. | .. | | .. | .. | 84 | 104 | 15 | 65 | .. | 49 |
| Total Expenditure . . | 348 | 283 | | 362 | | 544 | | 602 | | 959 | | 880 | | 881 | |
| Per Annum . . . . . | 32 | 20 | | 30 | | 45 | | These must be divided into 4 Years, viz.:— | | | | | | 74 per Month. | |
| | | | | | | | | 1838 | 1839 | 1840 | 1841 | | | | |
| | | | | | | | | 51 | 51 | 51 | 51 | | | | |

As it is a gratuitous relief, to prevent abuse, the constables make it a rule to give to no one, unless he is recommended by some rate-payer, and also to prevent the same persons applying two or three different times.

4056. Mr. *De Courcy.* Permission has been refused to me, though I am a ratepayer, to recommend a person.

4057. (To the *Contrôle.*) In case of a person refusing to go from the Island, what would be the remedy?—In case of a person refusing to go, he would be brought before the Court.

4058. What would take place upon that?—The Court would examine into the case, whether the man ought to be sent away or not: and, if they decided that he was to be sent away, they would authorize the constables sending him away by the first opportunity; and, if necessary, they would authorize the constable to keep him in prison till the vessel sailed.

4059. Could you give the Commissioners the form of an order of Court in such a case?—The order is similar to that in any case of complaint; it always expresses that the party complained of is "au charge."

4060. Where the complaint is that the person is de mauvaise vie, would that be expressed?—Yes.

4061. And then it is ordered that he shall leave the Island?—Yes. The form is étant au charge il est ordonné qu'il vuidera l'Ile. But, in the event of a person being brought up under those circumstances before the Court, he would be allowed to give bail that he should not become chargeable; and, if any person came forward who was willing to be bail for him, that would put an end to the proceeding.

4062. Would a person be allowed to disprove the fact of his chargeability?—Yes. That would be a matter of evidence; and, supposing chargeability to be proved, he would be ordered to leave the island, if he could not find bail.

4063. In the particular case, in which a person is brought before the Court and chargeability is proved, would it become a question before the Court as to where he is to be sent?—Yes.

4064. The Court would examine into that?—Certainly.

4065. Would the Court first inquire into his country?—The first question, I think, after having ascertained whether he was chargeable or not, would be where the person came from.

4066. Assuming the answer to be that he came from England, would the Court further inquire as to what part of England the party belonged to?—Yes; they would certainly inquire into that.

4067. Do they inquire into the place of his birth, or what inquiry do they make?—They would inquire into the place of his birth and his settlement. Where he was residing before he came here; what his calling was.

4068. What guides the Court as to where he is to be sent?—The wish of the party himself very much.

4069. Supposing he is a party who refuses to go?—He is told, "You must leave the Island; what place do you wish to get to?"

4070. Supposing he says, "It is indifferent to me"?—Then, of course, he would be sent to the first place to which a vessel was going. The course, I conceive, would be to make all those general inquiries. The constable comes forward and states upon oath, "this man is chargeable," and tells what story the man has given him. The man is asked whether he is chargeable or not. Supposing he denies his chargeability, that is matter of evidence. Supposing he admits it, he is told, "You must leave the Island; we cannot maintain you; where will you go?" And, upon that, all those different questions are gone into.

4071. Do they interrogate the party himself? "Where do you come from? Where were you born?"—Yes. In many cases that is given to them from the constable. The person contradicts the constable, if he states anything which is contrary to his statement.

4072. They would send him to the nearest port in England, to his residence, or place of birth?—Yes.

4073. Is there any particular rule adopted by you as to that?—There is no particular rule.

4074. Mr. *De Havilland.* It is always our endeavour to find out the parish to which the man belongs.

4075. The *Bailiff.* I take it the man would be asked generally, where he was settled in England; and, probably, his word would be taken. Every now and then we have sent over to us by the English authorities persons who are supposed to have settled in Guernsey; but they come without any legal document that we can appeal from. They are shipped by the English authorities, being probably settled in the very parish that sent them over.

4076. In that case you send them back probably?—Yes. There are many cases that have come before me incidentally in which that has been done; and I have been puzzled in my own mind to know what to do under those circumstances. With respect to the antiquity of this power of sending away those persons, I have a copy of a manuscript, which has no date, but which is, from internal evidence, manifestly written before the year 1605. It is intituled "Devoir de tous Etâts en l'Ile de Guernsey." It is stated "Item les dits conestables ont la charge de voir que nuls vagabons ny autre personne digne de travailler ne demeurent à part ou aillent mendiant, mais soient mis en quelque service par les dits conestables, et soient

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vestus aux fraix et coûtages de leurs paroisses: mais si les dits mendiants sont étrangers et ne se veulent mettre en service, les conestables les envoyeront hors de la dite Isle par le premier vesseau qui partira pour aller au pais dont ils sont natifs."

4077. Has not the Lieutenant Governor also the power of sending parties who are not natives from the island?—Yes; aliens. That subject has lately been brought before the Privy Council, and adjudicated upon there.

4078. That is a power, is it not, of very ancient date?—Yes.

4079. Would that extend to natives of England, or is it confined to aliens from the allegiance of her Majesty?—I conceive it is clearly confined to aliens from the allegiance of her Majesty.

4080. In case of a person sent out of the Island by means of an order of the Court, if he should return, is there any punishment attached to his returning?—No. My answer of course is limited to the particular case which I mentioned.

4081. You mean where persons are brought before the Court for being chargeable, and are sent out of the country?—Yes.

4082. Of course, if they were sent out by a pass willingly, there could be no punishment for their returning?—No.

4083. They would be liable to be sent out again probably?—Yes.

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Mr. William Mellish.

Mr. *William Mellish*, examined.

4084. You have been head constable, have not you?—I have.

4085. When did you cease to be constable?—In the spring of 1845.

4086. Were you constable of the town parish?—Yes.

4087. How long had you been constable?—Twelve months. That is the regular time. You are allowed to remain three years; but it is such an office that every person who has any good wishes to himself gets out of it as soon as possible.

4088. Are the assistant constables and special constables under the orders of the principal constables?—I do not believe there is a person in the Island who can tell you anything about that. Very often I have come before the Court, and the Queen's Officers have told me: "Monsieur vous êtes le chef de police:" but, if I go to the person himself, he will tell me it is his business, and not mine.

4089. The whole body act independently, in fact, do not they?—Yes, they do.

4090. Supposing a riot were apprehended in any one place, and you thought it exceedingly important that the police should be gathered at that point, and any of the police constables took a different view, and thought it was elsewhere, would they all act for themselves?—If I were to go to the assistant constables, and say "I wish your attendance in the evening," they would attend. But, if I were to go and interfere with an assistant constable, when he has a case in hand, he would tell me to go about my business. The duty of an assistant constable has varied very much. Formerly, they used to attend at the Police Office every morning at ten o'clock, to receive orders from the head constable; but that has been done away with. They think their power is just as great as the head constable; and there is nothing that wants regulating more than that in the Island of Guernsey.

4091. Do you think that the existence of insubordination or want of organization of that kind, has produced any mischief?—That is what I think requires most alteration.

4092. Do you think, in point of fact, property or life has become less secure from the want of organization?—I think the assistant constables are as active, All I mean to say is that the power is not defined between both, between the head constable and the assistant constable. There is no regular rule; there is no rule whatever, who or how. They are chosen by the parish; and there is an end of it. They act as they please and as they choose; and, oftentimes, the constables will come to the Police Court and sit down, and cases will be brought up by the assistant constables that the constables have not been told of and know nothing about.

4093. Do they make no report to the head constable?—They may do it by chance; but they do not think themselves obliged to de so.

4094. It is not the system to make a report?—No.

4095. Supposing you heard of a robbery, and you were told that one assistant constable had gone to one end of the town, and another to another, and a third to another, have you the power to command those three constables to go at once to one place?—I would tell them, such and such a robbery has taken place, if they pleased to go. But, if I were to say, "Go, and do that for me," if they did not go, I should then come and bring it before the Court; and I should have to state the reasons why I did not go myself.

4096. If they did not go to those places you indicated, would the Court visit it as a case of their not acting upon information given them?—As there is no rule for a constable to go by, in such circumstances he is left to the views of the Court, and the Queen's Officers, and the townspeople. He is chosen by the parish. After he is chosen by the parish, he goes into the douzaine; he assists there in everything that is done; and he knows his routine of business. But, as to any other part of his duty as constable, he knows nothing about it. Go to the Queen's Officers, what will they say?—"You must do as those have done before you." That is exactly what the Procureur or the Contrôle would tell you.

4097. As a matter of fact, do you think the want of organization has led to any insecurity of property?—It is according to who you choose for assistant constable. There are some that are very active, and some that are of no use whatever.

4098. Does it produce less security in the streets?—I might judge of that if this town

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were a town where there were broils and assaults committed at night; but you may walk these streets all night long, and you will not find, perhaps, two persons in the street after 11 o'clock. I do not suppose there is any town in Europe more quiet than this is, generally speaking.

4099. Is there anything like a day or night patrol by the Police?—Unfortunately we had a gang of thieves in Guernsey, during the time I was in office. There had been a great many robberies committed; and the Court called all the constables together, and said, of course they wished very much that those cases should be found out; and we made a point of our own free will to go. I took half the assistant constables, and the other constable took the other half, and we paraded the town and the suburbs of the town at night.

4100. Who superintended the distribution of the force in that case?—I asked one of the assistant constables to come with me.

4101. You arranged it?—We agreed upon it among ourselves.

4102. We understand that there was a claim upon the part of the Police to call out the military to assist them?—At one time, we had the facility of putting any vagrants or drunken men in the guard-house down upon the pier. That place was built partly by the Government and partly by the States; but afterwards it was given up to Government. Formerly, we could ask for the assistance of soldiers, and it was granted to us. But there was an order came from the Horse Guards; I believe a representation was made by General Napier to the Horse Guards about it (*). In cases of fire, and so on, we could go to the fort and ask for some men to assist us; but that has been very much restricted by this order.

4103. Was not the direction from the Horse Guards that application must be made through the officers, and that they must use their discretion?—Yes.

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Colonel *Thomas Kennedy* examined.

Colonel Thomas Kennedy.

4104. How long have you resided here?—I was appointed Aide de Camp here in the year 1805; I have resided here the greatest part of the time.

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* The following is the Order referred to, approved by the Secretary at War and the Secretary of State for the Home Department.

*Permanent General Orders for Guernsey.*

In all cases where the Military force is called out in aid of the Civil authority, the responsibility of keeping order is thrown upon the Lieutenant Governor or some person to whom he may issue his orders upon the occasion.

The Military force of every description is essentially and solely under the command of the Lieutenant Governor. Neither the Bailiff nor the Royal Court, nor the Constables and Assistant Constables, can claim military assistance, unless with the sanction of the Lieutenant Governor.

The cases in which the present Lieutenant Governor will sanction the employment of Military force in aid of the Civil authority, are as follows, and conditionally, viz :—

1.—FIRES BY NIGHT OR DAY. On such occasions, at the requisition of a Constable or Assistant Constable who shows his staff of office, the Officer commanding the troops will give such aid as he may deem necessary, whether to guard property or extinguish the flames, or both; keeping however the armed party and the fatigue party distinct, and under different Officers, who will follow the general directions of the Constables present, in the mode which seems best at the time to attain their object. The Commanding Officer is to act with the utmost promptitude on such occasions; but he is to send instant notice of the requisition made to the Lieutenant Governor, indicating also where the fire rages.

2.—IN THE EVENT OF ANY GREAT OR DANGEROUS RIOT, Constables or Assistant Constables may demand Military aid from the Officer commanding the troops at the Fort or other Barracks; and the latter will immediately put the troops under arms in readiness to act: but he must not march to the scene of riot, until he has reported the occurrence to the Lieutenant Governor and received his orders. A Constable or Assistant Constable will also on such occasions proceed at once to the Lieutenant Governor's house at the same time that his colleague goes to the Commanding Officer to demand the aid of the troops. This with a view to save time and render the assistance more prompt.

3. It is not likely that in Guernsey any riot should occur, so sudden and dangerous as to require the instant interference of the military: but, should such an emergency arise, and the Lieutenant Governor be at any distant point of the Island, the Officer commanding the troops will then act according to his own judgment of the emergency, without waiting for the sanction of the Lieutenant Governor.

4. When the troops are called out to aid the Civil power in quelling riots, the Officer commanding will always send an ample force, and he will keep the remainder of his troops under arms until the riot is quelled; and, in this and *every case*, the troops who do not march out will be kept under arms until the troops who do march out return.

5 The Officer commanding any detachment sent to quell a riot will keep his men together, *as a support to the Civil force;* and they must not act as a Military force until the efforts of the Civil force have entirely failed to restore the public peace, and that, the chief Civil authority present having complied with all legal forms, has declared his inability to quell the disturbance without Military interference. Then the Officer in charge of the troops will act to the best of his judgment, and vigorously, so as to make the turbulent respect his force, but with a humane discretion according to circumstances.

6. A Constable or Assistant Constable who obtains the aid of the troops must not quit the force so obtained, unless another peace Officer of as high authority takes his place; if he does, the Officer commanding the troops will march them back to their quarters, unless the Lieutenant Governor be present on the ground.

7. No demands for Military aid made by the Bailiff, or the Royal Court, or the Constables, or Assistant-Constables, for escort of Civil prisoners, or for suppression of brawls or frays, or for common police cases, or for any case save those above-mentioned, are to be complied with, except under the particular sanction of the Lieutenant Governor. But this prohibition will not apply, if a Constable or Assistant Constable should, in the execution of his duty, be placed in positive personal danger, where he cannot obtain the aid of the Civil force for his protection. In such cases, the Commanding Officer of the troops, if applied to, will use his discretion in granting an armed force for protection: and every officer and soldier is bound, like all other citizens, to give aid to a civil officer in danger who calls upon them in the Sovereign's name.

Guernsey, April 12, 1844.

WILLIAM NAPIER,
*Major General and Lieutenant Governor.*

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Colonel Thomas Kennedy.

September 28th, 1846.

4105. You were not born here?—No; I came as Aide de Camp to Sir John Doyle.

4106. Where do you reside? In the town?—In the new ground, L'Hyvreuse.

4107. What is your opinion of the quietness of the town? Is the peace tolerably preserved?—I go home rather late; and I have never found anything but peace and quietness.

4108. And property is understood to be safe, is it?—Yes; we have no lock upon our house but any one could open with the greatest ease.

4109. (To *Captain De Lancy.*) You have resided in Guernsey, have not you, some time?—Yes.

4110. Do you agree with Colonel Kennedy's representation as to the state of the town?—The town is quiet enough, certainly; but, at the same time, I think a paid police here would be of service.

4111. For what purpose?—For general purposes; to examine into the state of things in different parts of the town.

4112. You think it would be of service on account of its general vigilance?—Yes.

4113. If there is nothing for them to watch nor any crime to be repressed, what would be the need of them?—In the case of robberies taking place, the duty falls upon the constables, who are unpaid officers.

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Colonel Frederick Mann.

Colonel *Frederick Mann* examined.

4114. Are you a Colonel in Her Majesty's service?—Yes; I am a Colonel in the Staff Corps.

4115. Have you heard the evidence which has been just given?—Yes.

4116. Do you agree in it?—I am not in the habit of visiting the town late at night; but I have always understood it to be very quiet.

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Colonel Ambrose Lane.

Colonel *Ambrose Lane* examined.

4117. Are you a Colonel in the army?—Yes; I am a Colonel in the Line.

4118. How long have you lived here?—About twenty four years.

4119. Are you an Englishman?—Yes.

4120. Do you agree in the evidence as to the general quietness of the town?—I do.

4121. Mr. *Mellish.* I think, to prevent misunderstanding, I ought to give some explanation as to persons sent away from the Island. I said that I had sent away seventeen out of twenty three persons. It occurred in this way. They came to my house at seven o'clock at night, and asked me if I could give them a bed and something to eat; that they had been brought here from England by a gentleman, who led them to believe that there were public works going on in Guernsey: and, when they came here, they found they were deceived. In the case of persons coming to the Police Office to ask for relief, we ask them first, where they are from; and, after they have stated their case, if we consider them worthy of relief, we give it to them; and, if there is any way for them to get on in the Island, we do not send them away. There were one or two men in my time, one in particular, he had a very bad leg: he was an active man; but his leg was taken off in the hospital: his family, however, worked hard; and this man has been left in Guernsey because he was an industrious man.

4122. We understand, if persons have been a certain time in the Island, it makes a difference as to your sending them away?—Yes. We have now in the office a number of persons whom we assist weekly; old people who have been here thirty years or longer than that. Those people we do not send away; we allow them so much a week.

4123. Was it ever your misfortune to have to send people away for bad conduct?—Yes; we have sometimes done so. For instance, if a man is in the habit of getting drunk and lying about the town, and not attending to his work, we have sent people off in such circumstances when they have come to ask us for relief.

4124. Without their applying for relief, have you sent any persons away for bad conduct?—They are brought before the Police Court first, and the Court decides upon it. They are generally bound to give bail within a certain time for their future good conduct.

4125. Then the practice is, as to those who are guilty of misconduct, to bring them before the Police Court and make them either give security for their good conduct or quit the Island?—Yes.

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Mr. George Payne.

Mr. *George Payne* further examined.

4126. Have you any observation to make?—Whenever the high constable calls upon us, we always consider it our duty to go; and, whatever he says, when we are in his company, we abide by.

4127. You yourself do so?—It is the general practice of the assistant constables. But, if we undertook a case and the high constable came the next day, we should tell him it was our case, and he could not interfere with it.

4128. The case then becomes your property?—Yes; we bring the case before the Court. We take the same oath as the constable does.

4129. Suppose there were an apprehended riot, on any occasion, and the high constable said, "I think the great danger is up at the end of the esplanade," and the assistant

Mr. George Payne. September 28th, 1846.

constable said, "No, I think it is down at the harbour;" should you think it your duty to give up your opinion?—If there were three or four of us, we should go to separate places.

4130. Suppose he said, "I think all should watch at the place where there is most danger:" should you think it your duty to comply?—When called upon by the high constable, I think we ought all to go with him.

4131. You would think it your duty to give up your own view in such a matter and act upon his?—Yes.

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Maurice De Courcy, Esq.

*Maurice De Courcy*, Esq., examined.

4132. The Commissioners understand you wish to offer some observations to them?—I think it was in 1828, the high constable was called on in a case of riot, and the assistant constable, who certainly is one of the most respectable men who ever filled that office in the Island, was in a billiard room. The constable was sent for; but the assistant constable reached the point before him. The constable was Mr. Curtis; the assistant, was a person of the name of Rendell. Two gentlemen pointed out to the constable, some very serious complaint which had been committed upon a young gentleman in the Island. The assistant constable set the constable's authority aside, and even swept him away from the surface of the room.

4133*a*. You rather take Mr. Mellish's view of the case?—Yes. In addition to that, I have been at Plymouth and at Exeter: and there I found the police much better established and organized than it is in this Island: but they were paid; and the labourer is worthy of his hire. The consequence was, that there was no instance of crime in those places. All the vagabonds were driven from those large places into localities where there was no watch or protection to property, and that at a very trifling expense indeed. When you consider the extraordinary population of the City of Exeter, and the opportunity which is given there for plunder, I was surprised at hearing that there were only four cases of criminal prosecution in two years.

[Adjourned to to-morrow at eleven o'clock.]

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Maurice De Courcy, Esq. September 29th, 1846.

*Tuesday, 29th September*, 1846.

*Maurice De Courcy*, Esq., further examined.

4133*b*. The Commissioners understand that, you wish to address to them some further observations?—Yes; I would wish to state to the Commissioners that, in the year 1837, during the Hampshire election, I was leaving Winchester about 4 o'clock in the morning; on the top of the coach I met an overseer of a parish from Birmingham, having charge of six paupers, one of whom was an idiot. The children were children of a soldier who had been in the garrison at Jersey. I advised the man to leave the paupers at Southampton, and go over to Jersey himself to ascertain whether they would receive them. The man did so. What I wish to represent to the Commissioners is that, if these Islands are to maintain the children of soldiers who happen to have been here, the whole riches of the place will not be sufficient for the purpose.

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Mr. Joshua Philip Thomas Ahier.

Mr. *Joshua Philip Thomas Ahier* examined.

4134. Are you constable of St Peter Port?—No. I have retired.

4135. When were you so?—On the 21st of last May I got out of office.

4136. From what time had you served?—From the 19th of April the previous year. I was thirteen months in office.

4137. There appears, from the evidence before the Commissioners, to be some little difference of opinion, as to the degree in which the assistant constables are under the directions of the head constable; do you conceive the assistant constables are bound to obey the orders of the head constable?—I have always thought so.

4138. Putting the case of a fair difference of opinion between them?—In my case, they have been always ready to assist me in all cases of emergency.

4139. Supposing you apprehended a riot in some part of the town, and it occurred to you that the only place of danger was the harbour, and you wanted the assistant constables to attend there, and the assistant constables said, "We think you are wrong, and that the real danger is at the Esplanade;" would they think themselves bound to act upon their own opinion or yours?—I have always found them very ready to do what I directed them.

4140. No difference of opinion has arisen in your case, probably?—No; not in my time.

4141. Perhaps, you met and consulted?—I always did it, and they all used to attend the office in my time and make their report. Everything that transpired, at any time during the night or the day, I was always informed of it by them, either the next day or evening, or when they had an opportunity of meeting me.

4142. Had you the power of making them patrol the streets at night, if you thought it necessary?—I have done it on some occasions; and they were quite ready to do so, both assistant and special constables.

4143. Has it often happened that you have found that necessary?—About two or three times during my thirteen months. Two occasions were at the theatre, where we anticipated a little disturbance with the soldiers. We were told that the soldiers and sailors intended to be at the pit and gallery to create some disturbance. We met together on the evening; three or

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four of us met at one time; and the others met as the people were eturning from the theatre, in two or three parts of the town.

4144. What is meant, at this moment, is the actual patrolling of the streets at night?—That has never been done in my time.

4145. Do you conceive you have power to compel that?—I have always thought so.

4146. Do you consider property tolerably safe in houses in this town?—Yes.

4147. Are cases of house-breaking common?—There have been a few, but not very many.

4148. What should you call few or many?—I am only speaking of during my time. There were only three cases of house-breaking.

4149. Were those all detected?—Two of them were detected; the third we could not find out.

4150. Were they in the night?—Yes.

4151. All three?—Two were in the night. I could not say as to the third.

4152. The two that were detected were in the night?—Yes.

4153. Do you consider that the assistant constables have the power to act, under the Ordinance for the removal of paupers who are chargeable, as well as the head constable?—No; they have no power. The head constable is bound to give a printed pass, so that the assistant constables, whenever cases come under their notice, come up to the office and state the case to us.

4154. Do you remember how many were removed during your year of office?—There were about forty six families with children, some two, some three, and some five. There were one hundred and twelve single persons, male and female.

4155. Besides the forty six families?—Yes; all those were sent away at their own request. They applied to me or to the assistant constables asking for passes, being destitute and having no work.

4156. Have there been any appeals from your removals to the Court?—Only in one case. The individual was a person who brought a pauper, at least a labouring man, and his family to the Island, and promised to give him work. The twelvemonth and a day had not expired; and he wished to go back. I applied to the individual to remove this family at his own expense. He refused to do so, and brought me before the Court.

4157. Do you recollect any instance of removal, in your time, where the people objected?—No; not in my time. I think, a week previous to my entering into office, there was one individual whom Mr. Collings sent over to England. I did not see the woman herself; but I heard it reported that she had made some appeal refusing to be sent out of the island.

4158. Was that Ann Elliott?—Yes. There was no force used in her case. She was quite destitute; she had no friends; her only relatives were at Weymouth. Mr. Collings the constable called on us on the subject.

4159. Was she brought before the Court?—No; at least not that I know of. Mr. Collings did not mention the circumstance to me.

4160. How long had she been in the Island?—Fourteen or fifteen years, I understand.

4161. We were told, yesterday, that the law was never, in practice, applied to persons who had been a certain time in the island.

4162. Mr. *Lefebvre* (Greffier). It has been customary to allow persons to remain here who have become infirm and aged; but there have been many instances of persons who had been a long time in the island being sent away.

4163. (To Mr. *Ahier*.) Was there anything, in this woman's case, to distinguish it from the ordinary case of people who have been industrious and have become incapacitated?—I think Mr. Collings asked her, as she was not able to get her livelihood, whether she would go to the workhouse.

4164. Had she applied for relief?—She had applied to the constable. We have a number of paupers of a certain age, whom we allow two and sixpence and three and sixpence a-week to; and, as she was out of employ, she applied to the constable to submit her case to the Douzaine, to have a certain amount weekly. She declined going to the workhouse; and then he proposed that she should go to Weymouth, it being near her own home, and among her friends. I understood from him that she made no difficulties. The steamer was to leave the Island very early in the morning. Mr. Collings called on her, and found her trunks were packed up. He did not give her a common pass, but gave her money to pay her passage, in order that she might not go as a pauper, but might return to her own friends.

4165. How old was the woman?—About fifty or fifty two.

4166. Do you know what occupation she had followed?—A domestic servant. She was at my house a few months.

4167. You knew her therefore?—Yes.

4168. Was she an industrious and well conducted woman?—Quite so.

4169. There must be a process before the Cour Royale, must not there, according to the Ordonnance, to give an inhabitant the right of a native?—Yes.

4170. The *Contrôle*. They would acquire the right to relief by paying rate.

4171. (To Mr. *Ahier*.) Had this woman paid any rate?—No.

4172. Would not this have fallen within the case of indulgence mentioned in the Ordonnance?—She was quite able to be removed; and I do not think she had been long enough in the Island to come within the indulgence.

4173. You would construe that clause in the Ordonnance not to apply to so short a residence as fifteen years?—Yes; and we had the full number on the list.

4174. Mr. Collings thought that, the list being full, this was a case in which he might exercise his discretion as to the removal of the woman or not?—Yes.

4175. Your answer would be, would not it, that this was not a case coming within the rule, but still that there was no want of indulgence?—Yes.

Mr. *Thomas Barnes* examined.

Mr. Thos. Barnes. September 29th, 1846.

4176. What are you?—I am a shoemaker.

4177. Living in this town?—Yes.

4178. Did you know Ann Elliott?—Very well, and her father before her.

4179. Was he a native?—No; he came here forty years ago and rented a house in New Town; he kept a public house there.

4180. Do you recollect her going away the last time?—Yes, very well. I was the person who saw her off.

4181. Did she go willingly?—No; far from it.

4182. How came she to have her trunks packed up?—Because Mr. Collings said there was no alternative, as it was the last packet by which she could leave.

4183. Did you hear him say that?—No; that was what she told me. There is a mistake in the statement with regard to fifteen years. She had been thirty five years in the island.

4184. You were not present at any of the conversations between her and Mr. Collings were you?—No; I was not.

4185. Are you quite positive about her going unwillingly?—Yes. I applied to Mr. Ahier, myself, on the subject. Mr. Collings said, he could do nothing for her.

4186. Had she any mode of getting her livelihood at that time?—No; from her deafness she could not get a situation.

4187. Where was she living?—I believe with one Mrs. Smith, in Fountain Street.

4188. Residing there as a friend?—Yes. She had been backwards and forwards to the Island two or three times.

4189. You say she had been here thirty five years?—Yes. I knew her when she came to the Island, and her father before her.

4190. You say she had been backwards and forwards two or three times?—Yes; with different families.

4191. Perhaps the fourteen years which Mr. Ahier speaks of was from her last coming here?—It was only with different families, in whose service she was, as they left the Island in the summer season. There is a gentleman in the Island of the name of Connell, whom she lived with many years; she left with that family.

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Mrs. *Francis MacGurn* examined.

Mrs. Francis MacGurn.

4192. Are you an English woman?—Yes.

4193. How long have you lived in this island?—Since 1819.

4194. What are you?—My husband is a pensioner from the Artillery.

4195. Did you know Ann Elliott?—Yes; above twenty years ago.

4196. Do you recollect her going away?—Yes; she went from my house.

4197. Willingly?—No, not willingly; she grieved very much about it. She was under compulsion.

4198. Why do you say she was under compulsion?—She had no way of living, except what little I could now and then do for her; and, coming backwards and forwards, she always came to my house as a mother.

4199. Were you present when Mr. Collings directed her to go?—Yes.

4200. Did she object to go?—I stated the case, in the first place, to Mr. Cochrane; and he told me he would lay it before the gentlemen. Mr. Mellish was in office then; and Mr Collings was just come in. He said he would lay it before the committee; but I believe he forgot it. It was then mentioned to Mr. Collings; he came to my house, and she was there. He said to her, "You have made an application to be taken into the house, or to be allowed something from the parish." He said that he could do nothing for her; that she must be sent home. I told him, it was a very hard case, that she had been thirty five years in the Island, and that I always knew her in gentlemen's families to be a very good servant: she lived with Mr. Ahier, and with Mr. Connell nine and a half years. He said nothing could be done for her; if she was not born in the Island, she must be sent home. I asked Mr. Collings, could he do any thing for her, that she was quite destitute being deaf so long. He said he could do nothing for her, except pay her passage. He told her he would send a man to take her box down by the first vessel that was going, which was in a few days. I went to Miss Dobrée, in Grange Road, the next day; and she made a little collection for her before she went, or she would have gone quite destitute.

4201. (To Mr. *Ahier.*) When a person gets relief from the Douzaine, which we understand is a charitable assistance given by the parish, is it generally permanent or temporary?—Temporary.

4202. Did she ask for any thing more than that?—She asked for relief for the remainder of her existence. She tried three or four services; but, in consequence of her deafness, she was not able to get a livelihood. She wished a permanent relief.

4203. It was only the Douzaine she applied to, was it?—First of all, to one of the constables. The constable relieves them just for one or two or three weeks, till the body of the Douzaine meet on a particular day. The constable then produces the case before the Douzaine, on a particular day, and states the case. In consequence of her deafness and so on, she applied to be put on the permanent list. I may mention that there are several individuals on that list receiving two and sixpence and three and sixpence a week, who are not natives. That is only a relief for strangers. The constables only relieve strangers.

4204. Mr. *Carré.* The native poor are relieved by the Procureur des pauvres; stranger poor are relieved by the constable, after consulting the Douzaine. The principle, upon which

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that is done is that the relief of the stranger poor is not obligatory, but it is permitted by the Douzaine by an Ordinance. I have always understood, though I would not speak confidently to the practice, that an industrious stranger, having remained here sometime, and being prevented from finding employment or work by some temporary cause, is allowed temporary relief, if he appears likely to be able to find employment afterwards.

4205. Who are the strangers that are on the permanent list?—They are persons who are aged or infirm, so that it would be a cruelty to send them back to their parish. I would beg to suggest that some of the older Douzainiers, who have been in the Douzaine, would be able to give more correct information upon the principles adopted by the Douzaine in this matter.

4206. Is the relief by the Douzaine a voluntary subscription?—It is out of the funds of the parish. A discretion is allowed to the Douzaine; and I speak of the way in which they use it.

4207. Mr. *Ahier*. With respect to persons being sent away from this Island, there is no force whatever used. There were several instances I could name, but one in particular. I was in office, as one of the Directors of the Hospital. There was an old man, a native of this Island seventy five years of age, of the name of Lepage; he was out of the Island for forty five years. He married an English woman in London; and, in the forty fifth or forty sixth year, he applied to the authorities in London for relief. They ascertained his name and occupation, and sent a Police Officer to Southampton, and shipped him on board one of the steamers to this Island. This was a very peculiar case. When the old man arrived in the workhouse, the authorities there and the inmates in the house did not recognize him. At last, the mistress mentioned that there was an old woman in the Hospital ninety five years of age. The old man was taken into the ward; and, the moment the old woman saw him, she looked up, and burst into tears, and said, "This is my son." Therefore the authorities could not refuse taking him in, though they had doubted whether he was a Guernsey man.

4208. What species of control has the constable over public houses here?—By an Ordonnance we have power to visit them whenever we think proper, and to see that the regulations of the Ordonnance referring to public houses are put in force.

4209. (To Mr. *Carré*.) Does not the Cour Royale grant the licence?—Yes.

4210. The Cour en corps?—Yes; at present, it is generally done upon the recommendation of the Douzaine of each parish. It is never granted till an application has been made to the Douzaine and their opinion taken.

4211. Is it a license to sell spirituous liquors or to keep an open house?—To sell spirituous liquors.

4212. May an ordinary shop have a license of that sort attached to it?—Yes; it is only to sell spirituous liquors.

4213. The *Procureur*. The house is specified in the license.

4214. (To Mr. *Carré*.) Is the license a personal license, or does it refer to a specific house?—It is both. It is to such a person to sell in such a house.

4215. Is any person allowed to object to the grant of a license?—If any person were to object, his objections would be attended to.

4216. If some one were to allege that the person applying for a license was an unfit person to be entrusted with a license to sell spirituous liquors, would his representation be attended to?—Yes; there have been cases where a license has been refused upon such objections.

4217. Do the Court not only exercise the power of granting licenses, but also a discretion as to the propriety of granting them?—Yes.

4218. Mr. *Ahier*. There is one thing I wish to refer to, that, during my thirteen months of office, the monies spent for stranger poor amounted to 1025*l*. 13*s*. That was for the relief of stranger poor, passage money, coals, soup and medical attendance.

4219. What is the general head of L'Hôpital?—That would include hospital relief for stranger poor.

4220. The whole items of expense in the hospital for stranger poor are under that head?—Yes; out of that 1,025*l*., 175*l*. is paid by the States of the Island for soldiers' wives who have served here in garrison. The constable advances the money, and, at the end of the year, the States repay it to us.

4221. (To Mr. *Carré*.) On applications for licenses, have you any rule that members of the Court, who themselves deal in spirits or are interested in houses of the kind, cannot join in granting licences?—I do not think there are any such upon the bench.

4222. The *Bailiff*. The following Regulation of the Commissioners of 1607 is all that subsists upon the subject. "Forasmuch as we are of opinion that brewers and brewhouses, being discreetly ordered and well used, would rather prove beneficial than prejudicial to the poor inhabitants, who (as we are credibly informed) for want of brewers, or of skill in brewing, or of such other things as are thereunto needful, for the most part drink water; we do therefore refer the consideration hereof to the Bailiff and Jurats who best understand what appertaineth to the common good of the Island, and, whatsoever order they shall set down herein, we require to be observed; provided always that neither the Bailiff nor any of the Jurats shall be a common brewer to the end to sell any beer or ale in any wise."

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John De Havilland Utermarck, Esq., Contrôle de la Reine.

*John De Havilland Utermarck*, Esq., Contrôle de la Reine, further examined.

4223. There is a proceeding of the Court by summary jurisdiction is there not?—Yes.

4224. Is it in the sitting au secret that the Court decides whether the case shall be disposed of in exercise of summary jurisdiction or not?—If there is no doubt, upon the constable's state-

ment whether the matter shall be treated summarily or not, the case is gone into immediately, summarily in public. If any doubt exists in the mind of the Court, they would deliberate upon that privately; and, if they decide upon taking the case summarily, they would re-open the Court to do so.

4225. We take for granted the Crown Officers act, as advisers to the Court, in that particular as well as in others?—Certainly.

4226. The Crown Officers would be present at that private meeting?—Yes.

4227. Both at what precedes the private meeting and at the private meeting?—Yes.

4228. Does the decision take place immediately after the statement of the constable, and before hearing the evidence?—Yes. In some cases the Court will hear one or two of the principal witnesses, not upon oath, but by way of explanation. The examination is to know what the nature of the charge is. If there is any doubt upon it upon the constable's information, the decision is taken whether the evidence shall be taken in private or not.

4229. Can you give the Commissioners any thing like a practical test as to when the jurisdiction is summary or not?—The only practical test I can give you is this. When the offence charged, supposing it to be proved to its full extent, would be considered to be adequately punished by an imprisonment of one month, any part or the whole of which may be in solitary confinement and on bread and water or by a fine of 5*l.* at most, then the Court would take the case summarily. I think I might add to that, that, with regard to larceny, unless it be what is considered a petty theft, the practice is to commit for trial. I mean that the practice, in larceny, unless it be a very petty theft, is to commit; but, upon the trial, no further punishment is given than would have been given if the case had been taken au police.

4230. Do the Court by treating it summarily consider themselves bound not to inflict more than a certain punishment?—Yes. The jurisdiction of the Court does not extend beyond that.

4231. Does it not rest upon the exercise of a sort of discretion, whether they think the offence if it is proved would be liable to such a punishment?

4232. The *Bailiff*. It is not unlike the discretion of an English magistrate in the case of an assault.

4233. (To the *Contrôle*.) May the defendant, when he sees the Court are going to proceed summarily, have counsel?—Yes. The moment the proceeding is entered upon, of course he may have counsel.

4234. Supposing the defendant says, "I would rather take my chance of a larger punishment and have a larger body of gentlemen to hear the case:" has he the choice?—I do not remember any case of that kind having arisen.

4235. You have not perhaps turned your attention to the question whether that right exists?—I have never seen any such case arise.

4236*a*. The *Procureur*. In practice, they would all prefer a summary proceeding.

4236*b*. The *Contrôle*. I have seen the contrary arise.

4236*c*. Mr. *De Courcy*. I have myself applied to be heard before a full Court, and have been refused within the last month.

4236*d*. (To the *Contrôle*.) You say you have never known an instance occur of a party requiring to be heard before the greater body; and you have not considered the question whether the right exists?—No; I have not considered the question at all.

4236*e*. The *Bailiff*. I am inclined to think the Court would have a right to proceed summarily.

4236*f*. Mr. *Carré*. In cases of theft, and actual crime, not mere assault or disturbance of the peace, it has occasionally been put to the prisoner whether he desired to be tried summarily or by the Cour en Corps.

4236*g*. (To Mr. *De Courcy*.) You say you have known an instance where the option has been refused?—Yes; on August the 20th, 1846, I was brought before the Court at the instance of a constable, on a complaint: he told me, he was directed to investigate on the part of a person named Blair and his wife in this Island. I appeared before the Court, and cited many cases, from which I considered they were not competent to enter into the complaint; cases too, in which my own interests were involved and upon which I have been put to very considerable costs.

4236*h*. Was this a criminal charge?—It was a breach of the peace. I urged that the Court, as it was then constituted, was not competent to hear the case.

4237. You were over-ruled?—Yes; with advice of the learned Contrôle, in the absence of the Attorney General. I would also observe that, independently of the Court being incompetent in that respect, it was incompetent in the absence of another Crown lawyer.

4238. The *Bailiff*. I presided in that case; and I am glad this has been mentioned, because it makes my view rather more clear than it has been before. The case alluded to by Mr. De Courcy was a case in which the charge was one of assault. His objection was that a case of that kind was not a case of police, but that it was a case to form the foundation of a cause en adjonction. He argued that point on certain authorities which it is not necessary to go into; and the Court held that an assault or breach of the peace essentially belonged to the Police Court, and that the right to make it the subject of a cause en adjonction belonged to the complainant, and not to the party charged.

4239. You understood the alternative insisted upon by Mr. De Courcy to have been not a procès à l'ordinaire, but a cause en adjonction?—Yes; which is proved by the cases to which he referred, which were causes en adjonction; and the costs which he refers to were costs of proceedings where he, being the complaining party, had proceeded by a cause en adjonction. I only mention it, at present, to show that the question he raised was with respect to a cause en adjonction, and had no reference to the case immediately before the Commissioners.

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4240. Mr. *De Courcy.* I had appealed, and took the course which Mr. Blair took regarding me; and, to use the expression of a sensible man who appeared before the Commissioners yesterday, I found nothing but uncertainty and caprice on the part of the Court and constables, and the parties I applied to; and I was driven to the necessity of incurring an expense of 15*l.*

4241. The question the Commissioners want to understand is whether, if a party is proceeded against in a case where the alternative is either a summary criminal proceeding or a criminal proceeding by the Cour en Corps, he is permitted to throw himself upon the greater body?—Decidedly not in my case.

4242. We understand your argument was to prove the proper alternative to have been a cause en adjonction?—All I did was to protest against the course.

4243. The *Bailiff.* If I were to express an opinion, without binding myself to it, it would be that, where a matter was in the nature of a crime, such as a theft, the party would be entitled, if he insisted upon it, to be tried by the Court; but, where it was mere disorderly conduct, and a little more than a breach of the peace or an assault without any matter of aggravation, the Court, I think, would be quite justified in taking that summarily even in invitum. That I should apprehend to be the rule; but I do not state it as the result of any practice.

4244. Must not the question of jurisdiction always be a question for the Court?—Yes.

4245. Is there any Ordonnance or Order in Council on the subject?

The *Contrôle.* No.

4246. The *Bailiff.* There is an Ordonnance relating to the Police Court; but I do not think it touches that point. It gives power to sue for penalties for breaches of Ordonnances where the penalty is not greater than a certain amount. I do not think it limits the jurisdiction in any other way. In England a proposition has been made to allow juvenile offenders to be tried summarily. A learned Judge objected to it, because he thought it contrary to principle to allow a felony to be tried otherwise than by a jury, to which the answer was that nothing would be easier than to say that in certain cases larceny should not be felony.

4247. (To the *Contrôle.*) How often does the Court sit in exercise of its summary jurisdiction?—Every Thursday throughout the year, and oftener if required. I wish to add that Thursday being fixed for hearing cases en Police is by a modern custom.

4248. Supposing a person in custody charged with an offense whose punishment might not exceed the interval between that and the next Thursday, would that be thought a reason for sitting before the Thursday?—It might; and in many cases, where there is a doubt, the Court has met earlier.

4249. The *Bailiff.* The odds are that a person of that kind would not be kept in prison.

4250. A person likely to have less than a week's imprisonment, you think, would be warned?—Yes. I recollect one or two occasions of the Court having been requested to meet on that ground.

4251. The *Contrôle.* I wish to add that it is only of late years this custom has prevailed of meeting on Thursday. Formerly, the constables were in the habit of bringing up persons every time the Court sat, indiscriminately; the consequence of which was, when the Court were met to try civil cases in which sometimes there would be a great number of witnesses, the constables would come in to interrupt the proceedings, and the day would be lost and the suitors put to great inconvenience. In consequence of which the Court fixed Thursday for that special purpose.

4252. (To the *Bailiff.*) Practically, do you find meeting once a week sufficient for all purposes of Police?—I think meeting once a week with the power of meeting oftener is so.

4253. Mr. *Dobrée.* It not unfrequently occurs that, from week to week, there is not one Police case brought before us.

4254. The *Bailiff.* Before I left Guernsey there were four successive Thursdays on which there was not one conviction nor a committal.

4255. Is it in the power of the Bailiff to assemble the Court more than once in the week, or does it depend upon the will of the Court generally?—I suppose the Bailiff has the power; he has the power of summoning the Court at all times.

4256. So that, if once a week were not sufficient, it would be within the jurisdiction of the Bailiff to remedy that by summoning the Court on an additional day?—Yes. When application is made to the Court to fix a day, it is done by the Bailiff and Jurats; but, I apprehend, if a Court is to be summoned unexpectedly, the Bailiff is the only person to do so; and he does summon them, not only for judicial, but deliberative purposes. He summons the Court, if any matter arises, for the next day, or any time that may be necessary.

4257. Do the Jurats make a point of attending in rotation at the Police Court, or is there any order of attending?—That is done by the Quartier.

4258. Mr. *Mac Culloch.* That is regulated by an Ordonnance of 1608.

4259. (*The Ordonnance was read as follows.*) "Aux chefs Plaids capitaux, d'après le Jour S$^{t}$ Michel, tenus le Lundy 3$^{e}$ d'Octobre, 1608, P$^{r}$ Amice de Carteret Esc$^{r}$, Baillif, P$^{r}$sents à ce, André Harris, Jean Andros, Pierre Careye, W$^{m}$ Le Marchant, Nicolas Martin, George Guille, Leonard Blondel, Nicolas Lefeyvre, Pierre Brehaut, Thomas Beauvoir et Thomas de Lisle, Jurez.

"Est Ordonné que la Justice, en nombre de douze Jurez, assisteront à Mons$^{r}$ Le Baillif, ou son Lieutenant, à tenir Justice, savoir quatre d'iceux à chacune ouverture des Cours àpres les chefs Plaids, qui se tiennent, trois fois l'an, ou trois d'iceux pour le moins, sinon en cas de maladie ou excuse raisonable, neanmoins quoy, sera chacun sujet prier un de ses frères servir pour lui, à ce que Justice ne manque au peuple; lesquels quatre Jurez continueront à tenir les Cours avec le dit Baillif ou Lieuten$^{t}$, come à la coutumée et, en meuble, de huitaine en huitaine chaque jour de Mecredy jusques au chefs Plaids suivant, que quatre autres Jurez seront sujets pour assister à faire

Justice à leur tour. Et ainsi des quatre autres Jurez, et que la Justice sera tenue être en Cour des les 10 heures du matin chacun jour de Cour, et y continuer jusqu' à trois heures après midy, si le nombre des causes le requiert, et qu'iceluy Bailly, ou son Lieutenant, et Jurez auront pour eux les profits et emoluments tant du sçeau qu'autres choses qui pouront échoir durant leur tour."

4260. The *Bailiff*. There is nothing to prevent any other Magistrate attending.

4261. Do the Jurats regularly attend?—There are four whose duty it is to attend. I do not mean that every one of the four attends, every one of the days: but I think on the average there are three.

4262. In case of one of the four, whose duty it would be to attend, not attending, might the Court be constituted by the attendance of any other Jurat?—Yes; a message would be sent to some Jurat who happened to be in the neighbourhood. That occurred at the last Court day. Mr. Carré having presided as Lieutenant Bailiff in the first matter that came on, he continued in Court during that day, though it was not his Quartier. On the same day, while the Court was sitting in private, another Magistrate entered, Mr. Dobrée: but, as he did not hear the whole of the case, he took no part in it whatever; which is the invariable rule.

4263. When the Court is sitting as a Court of committal, has each Jurat a right to attend, or only those necessary to form the Court of committal?—I do not think there is any thing to prevent the attendance of any Jurat: but I do not at this moment recollect any case, in which more than four have attended.

4264. In cases that would excite great public interest, would not it be likely that most of the Jurats, if not all, might attend the Court of committal?—I think rather otherwise.

4265. You think, in those cases, it would be confined to the Bailiff and two Jurats?—To the Bailiff and four Jurats. Two form a quorum: but it is the business of four to attend, and, in a very important case, in all probability, you would have the Bailiff and four Jurats, and no more.

4266. The four form the whole committing Court; but two make a quorum?—Yes. There was lately a case of great public interest and of very great difficulty with respect to facts. It occupied the Court in private for a great length of time. I mean by a great length of time, two days, till late at night each day. There the Court consisted of the Bailiff and four Jurats.

4267. The four whose turn it was to attend?—Yes. It was at one time a question with the Court so constituted, whether it would not be advisable to have other Jurats present, in order to have the benefit of their advice, and that the matter might be inquired into by a larger number. The question was then considered upon general principles; and what was acted upon then, and which was rather looked upon as a general principle of right, was that the responsibility of acting should be taken by the Cour du Quartier alone, leaving the facts to come fresh before the Cour en Corps at the trial. That is not quite to the point of the Commissioners' question, but very nearly. I think it is the feeling of the Magistrates that the responsibility of the police business lies with those whose duty it is by law and custom to make up the Police Court; and I think that, the more important the case, the less likely you would be to have volunteers come in.

4268. Of course the case you mention was something which occurred while you have been Bailiff?—Yes.

4269. Have you any means of knowing whether the practice has always been uniformly that which you now state?—I cannot say whether it has been so or not.

4270. (To Mr. *Carré*.) Can you say how that has been?—I am aware of cases in which a larger number than the Cour de Quartier have attended.

4271. Have those been cases of public interest?—I only recollect two cases distinctly; one was the case of a murder many years ago, and the other the case of an accusation for conspiracy against certain officers of the Militia here.

4272. The *Contrôle*. In the last prosecution for murder, which was the case of the Danish boy, I find the following Jurats attended the preliminary investigation; Sir William Collings, Frederic Mansell, S. W. Gosselin, Tho$^{s}$. Le Retilley, Harry Dobrée, and Edgar MacCulloch, Esquires.

4273. That was at the Cour au secret?—Yes.

4274. Mr. *Mac Culloch*. On the day the man was committed the Court was not met as a body.

4275. Mr. *Carré*. I recollect another case, in which others besides the Cour de Quartier attended, though I am not sure that there were more than four. It was a case of an accusation brought by a person of the name of Irving against the then Contrôle about eighteen months ago. I think one of the members of the Cour du Quartier could not judge, as being a relation of the party accused.

4276. (To the *Contrôle*.) Is not it common for the Court sitting as a Police Court to order parties against whom there is a charge to find bail for good conduct, or to leave the Island?—Yes.

4277. Is that ever done in the case of a native?—Never, nor in the case of a person received as an inhabitant under the Ordinance.

4278. They are quasi natives?—Yes. I would also add, with respect to that point, that, in many cases where the Court ordered a person to leave the Island in default of finding bail, they give him a certain number of days to find the bail or to transact his business, preparatory to leaving the Island. The time depends upon circumstances; a week is very often given; and sometimes it is prolonged upon application.

4279. The bail is under some penalty?—He is ordered to give caution to the amount of from ten or fifteen or twenty pounds sterling, ou vider l'Isle.

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4280. Is the passage paid in that case?—Yes; the Prevôt pays the passage money, and he is repaid by the Crown.

4281. Do you give the person his choice then where he goes?—Exactly in the same way as the constables.

4282. Supposing a person leaves the Island, and comes back by the next packet?—Then he is sent back again.

4283. If he comes back, is the previous sentence of itself substantive evidence?—Yes. In a case similar to that which has been mentioned, supposing there to be a judgment against the person that he should give bail for such sum or leave the Island, if he should leave the Island in consequence of that sentence, and, immediately afterwards, return, the constable would, I think, consider himself authorized to send him back, without applying to the Court at all, subject of course to the same limitation, that the person would have a right to apply to the Court again, and a new acte would be made.

4284. Would he not in strictness have obeyed his sentence?—Yes.

4285. Is there any limit of time?—One year is considered to be the limit of time for the duration of that sentence, the time during which he is to vider the Island.

4286. If he goes away immediately, and does not return till the expiration of a year, he is then like a person coming to the Island for the first time?—Yes. In cases of persons returning in that way, before the year, after being condemned to find bail, it is usual to pass a new acte, and make a more stringent regulation. The constable might turn him out; but in some cases he might be brought before the Court, and a new sentence would be given.

Mr. *Carré.* That is very rare.

4287. The *Contrôle.* But it has occurred: there are cases where persons have been sent away and have returned again, and the Court has made a new acte. They have been imprisoned and ordered to leave the Island, et "défendu d'y revenir sans avoir donné la dite caution, sous peine de punition corporelle à discrétion de Justice."

4288. What would be the limit of that peine de punition corporelle à discrétion de Justice?—It might be imprisonment, either solitary, or on bread and water.

4289. What would be the time of it?—One month, I should think, would be about the time.

4290. Is there any legal limit?—No. In cases of persons having been banished from the Island after criminal sentence, they are tried for it.

4291. Does the return become itself a question of Police, or, the sentence having been passed and having been infringed, is it turned into an offence of another sort?—It becomes a matter of Police again.

4292. And, of course, the punishment would be limited to the punishment which the Police Court would have a right to inflict?—Yes.

4293. Are there any cases in which a person has an option given him by the authorities to avoid prosecution by leaving the Island?—With regard to the constable's authority to do so, I conceive he has none. Cases do occur, in which the constable makes use of that discretion upon taking the advice of the Bailiff and the Crown officers. In some cases, where the Court are sitting en Police, the constable brings a person before them accused of some petty offence, and says, "this person is willing to leave the Island:" and that has been allowed. There is also a special form which goes under the title of forjurer le pays. In some cases, where a prisoner, having been committed for trial in the ordinary form, is brought up to the bar, on the following Saturday, to plead to the inditement, his counsel applies to the Court for him to be allowed "forjurer le pays" for such a time as the Court may think fit, without going through a trial. It then lies with the Court to grant the application or not. This is founded upon Terrien, Book xii., chapter xxxiv., page 518, "De ceux qui se retirent en franchise et qui forjurent le pays." I would add that this is not the common practice; and, of late years, it has been seldom allowed. The last case, in which it was allowed, was in the case of two very young men, natives of Guernsey, aged about seventeen, who were indicted for housebreaking.

4294. What were their names?—Cohu was one, and Dufour the other. They were indicted for housebreaking. They were allowed "forjurer le pays," the one for four, and the other for five years. That was on the 27th of April, 1844, and is the last case. I believe there have only been two others since I have been at the bar; one of which was the case of an Englishman, and the other a Guernseyman.

4295. That prevents, of course, a subsequent charge for the same crime?—Yes; unless they return to the Island.

4296. If they returned, would they be charged with the old crime, or with returning?—For returning. I presume their returning before the time would have the same effect as a person sentenced to banishment by an acte of Court returning before the expiration of the banishment, which is an indictable offence. The record of the conviction would be produced, and the identity of the person proved. I have known applications for permission "forjurer le pays" refused.

4297. Do such persons pay their passage?—Yes.

4298. (To Mr. *Carré.*) Have you, in your experience, known any case of a person having returned to Guernsey, after having been permitted forjurer le pays?—I am not aware of any such case having occurred. I have no doubt he would be proceeded against, just the same as a person who had returned from banishment.

4299. Would his coming back subject him to the original punishment due to his offence?—I think not. I think he would be tried for this specific crime of having returned.

4300. The *Contrôle.* I think it is quite clear, from the form of the acte, in the case I mentioned. The acte says "Sur la demande du dit Cohu de forjurer le pays pour le terme et espace de cinq ans, la Cour, vû les circonstances particulières du cas, a accordé sa dite

demande, et lui est defendu de revenir dans l'Ile pendant les dits cinq ans, à peine de punition corporelle à discrétion de Justice."

4301. Mr. *Dobrée.* I wish to state, before the inquiry is closed upon the subject of strangers, that there is a numerous class here who create a great deal of trouble, and respecting whom there is no defined rule, so that it varies, and sometimes the Court find themselves embarrassed. I allude to the widows and children of military pensioners. There are, I believe, nearly three hundred of those individuals now settled in the Island. They themselves very seldom apply for relief, or become in any way troublesome: but, from the circumstance of the pensioners having a certain pension, ranging probably from one to three shillings a day, they frequently marry late in life, and leave in this parish wives, and sometimes large families, unprovided for. Those families, or part of them, very frequently apply for parochial relief, or relief from the constable's office, more properly speaking.

4302. You mean children born in the Island?—Children, some born in the Island, and some not. When they apply for parochial relief, the first question asked is, "What parish do you belong to?" And, very frequently, it is difficult to get at the parish, for two reasons; sometimes the wives do not know to what parish their husbands belonged; and, in other cases, aware of the very indulgent treatment which foreign paupers meet with here, they affect ignorance of it: consequently those parties remain here; and we find it, in numerous cases, quite impossible to get rid of them. I believe, I am speaking the language of the Police and of the Court, when I say we are very little acquainted as to what are the means to be taken to get rid of such persons, or to what extent, they being wives and children of pensioners, we have the power of sending them out of the Island. It is an increasing evil; those pensioners are increasing every year in number; and, as they die off, their families remain quite unconnected with any persons in the Island. Sometimes the children are born abroad; we have no means of knowing what their parish is; and they become chargeable to us for the whole of their lives.

4303*a*. They become a permanent burden upon the Island?—Yes; an increasing burden from year to year. It is exceedingly desirable, both for the Police and the Court, that the law on this subject should be defined.

4303*b*. Mr. *Carré.* There was a point, respecting the authority of the head constable over the assistant constable, which, I think, was not very clearly defined. It is settled, I think, by law sufficiently to enable the Commissioners to understand it. The first Ordonnance appointing and establishing assistant constables was in 1736. They were then appointed as mere assistants to constables, without any authority of their own. In the year 1799, the constables represented to the Court that, on account of the increase of population in the town and parish of St. Peter Port, the two head constables were not sufficient to keep the police of the town; and, for this purpose, they applied to the Court to enlarge the authority of the assistant constables, so as to enable them to act in the absence of the head constable. Here is the Ordonnance itself, in the terms in which it is drawn up, of the 30th of September, 1799.

*The same was put in and read as follows.*

"Sur la représentation des officiers du Roi, à l'instance des connétables de la ville et paroisse de Saint Pierre Port, que la population de la dite ville et paroisse de Saint Pierre Port est tellement augmentée, que les dits connétables ne suffisent pas pour y maintenir la police et le bon ordre, et que, pour à ce remédier, il conviendroit d'étendre l'autorité des assistants connétables de la dite ville et paroisse: La Cour, ouie la conclusion des dits officiers du Roi, a ordonné qu' à l'avenir les dits assistants des connétables seront, dans l'absence des connétables, revêtus des mêmes pouvoirs que les connétables mêmes, en tout ce qui regarde la police et l'ordre public en la dite paroisse, et, pour l'effet, que les assistants des connétables actuels et tous autres assistants ci-après prendront le serment suivant qui sera la régle de leur autorité et de leur devoir."

They were still the servants of the constable, and were bound to do the work assigned to them. It enlarges their power, but does not take from them their subordination. With regard to the manner in which special constables were first established, the first Acte, in November, 1838, shews they were only appointed for one week. At the end of that week, which was in November, they were sworn to act till the next Chief Pleas, which was till the middle of the next January. It was done upon the application of the constables. In January, 1839, they were again, upon the representation of the constable, sworn to act till the Chief Pleas at Easter of the same year. This was done upon the application of the constables and the douzeniers. At the Easter Chief Pleas of 1839, a portion of those special constables, they having been willing to continue their services, was then sworn jusqu' à autre ordre. I should wish to say, with regard to the case of Flinn, which was mentioned yesterday, as not having been arrested by the constable: the reason why the Court did not authorize the constable to take Flinn into custody was, not because they did not consider the identity sufficiently proved, but because it did not appear that any felony was charged against him, nor that any warrant had been issued for his apprehension. In any previous cases of the kind which I have known, the authorities have never been called upon to lend their assistance in apprehending a party for anything committed out of the Island, except upon charges of felony and upon the exhibition of a warrant.

4304. Was not this a case of embezzlement?—The *Bailiff.* There was no evidence to shew that it was not the case of a defaulter: and it appears probable that it was a case of default from this circumstance, that the corporation called upon the sureties to make it good.

Mr. *Carré.* The Court directed the constable to write to Dublin, to inquire into the particulars, before they would authorize him to take any measures.

4305. Is it the practice of the Court never to lend their assistance, in apprehending a person charged with an offence committed in Great Britain, unless a magistrate's warrant is produced?—Only in such cases.

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4306. (To the *Bailiff.*) Should not you consider it an advantage to have an Act of the Imperial Legislature enabling you to get at criminals in England and in Jersey for crimes committed here; and, vice versâ, for the Jersey and English authorities to get at criminals here. Might not the provision be also extended to compel the attendance of witnesses in criminal cases?—Yes. It requires some authority greater than we have in this Island. In the case of witnesses, great practical difficulty would arise here touching the mode of doing it and touching the expenses.

The *Procureur.* Our charters state that we are not obliged to leave Guernsey to attend Courts in England.

4307. The *Bailiff.* In looking at Cowell's Interpreter, voce "Abjuration:" he compares the Norman law with the English. "This part of our law," he says, "was, in some sort, practised by the Saxons, as appeareth by the laws of King Edward, set out by Mr. Lambard, num. 10; but, more directly by the Normans, evidenced by the Grand Customary, cap. 24, where the form of the oath is likewise set down with the rest of the proceedings therein, very agreeable to ours."

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Hilary Olivier Carré, Esq., Lieutenant Bailiff.

*Hilary Olivier Carré,* Esq., Lieutenant Bailiff, examined.

4308. With regard to preliminary proceedings au secret: are they absolutely au secret, so that no person has any means of becoming acquainted with what passes there?—The officers of the Court, called the Prevôt, and the Sergeant, are, by sufferance, allowed to be present.

4309. Do they take any oath of secrecy?—They do not. They are sworn officers of the Court.

4310. What are the terms of their oath?—Mr. *Lefebvre* (Greffier). "Vous jurez et prommettez, par la foi que vous devez à Dieu, que bien et fidellement vous exercerez la charge de Prevôt de la Reine, comme à telle charge et office appartient."

4311. (To Mr. *Carré.*) Part of their duty, of course, would be the maintaining the secrecy of the Court on those occasions?—Yes.

4312. No note is kept of what is said by witnesses au secret?—In general, not.

4313. The interrogatoire of the prisoner, of course, remains?—Yes.

4314*a.* The *Bailiff.* In modern practice, there are no depositions. There appear to be some, in particular cases, in ancient books.

4314*b.* Mr. *Carré.* I think, only in particular cases of importance some depositions appear to have been preserved.

4315. Of course, the witnesses take no oath of secrecy: they can, therefore, report what they have said?—Yes.

4316. Has the party accused a right to have his counsel present when he is submitted to the interrogatoire?—He has not. It is essential to the interrogatoire that it be taken immediately, before the party accused has communicated with the witnesses.

4317. Could not a prisoner have a counsel by him to say, I advise you not to answer such a question?—No; he must act of his own accord.

4318. After the interrogatoire has been taken, is it always communicated to the prisoner, or his counsel?—As soon as he has chosen his counsel, a copy is delivered to the counsel himself, that is, on the subsequent day.

4319. He does not select his counsel, does he, till a subsequent day, when he is called up?—He does not select his counsel till he is summoned before the Court to plead.

4320. Which is on a subsequent day?—Yes.

4321. After the interrogatoire has been taken, does the Court ever remand for a further examination of the witnesses?—They may, and do in practice, occasionally. The prisoner is brought up in custody; he would then be of course detained in custody, or some bail be taken. When he is "constitué prisonnier pour plus ample information," he is then in the Prevôt's custody, not the constable's.

4322. He then goes out of the charge of the constable into the charge of your officer, the Prevôt?—Yes.

4323. Have the Court the power of bailing?—Not in cases of theft, or in cases of a higher nature than theft.

4324. Do you mean that they have not the power, or that it is not usual to exercise it?—I believe they have not the power.

4325. So that, in the case of a person accused of highway robbery, or felonious homicide, you could not take bail under any circumstances?—No.

4326. Mr. *Le Retilley.* A man, in fighting another with fists, killed his antagonist; he knocked him down, and he was killed; but it did not amount to murder, and he was bailed.

4327. Mr. *Carré.* In cases of homicide, the accusation is always laid as if for murder. When it appears a clear case of homicide, and not of murder, before the Cour du Quartier, he is admitted to bail.

4328. But not for cases of petty theft?—No.

4329. Is there any order of Privy Council, or Ordonnance, defining the power of the Court to take bail?—No.

4330. (To the *Procureur*).—Is there any passage in Terrien upon this subject?—Yes, there is, Book xii. chap. xxxii., page 513. "*Si cas soit tel qu'il doye detention.*" C'est à sçavoir quand le cas est si grief qu'il requiert punition corporelle. *Tunc enim neque fidei jussoribus neque militibus reus committi debet, verum hanc ipsam carceris pœnam ante supplicium sustinere.* Mais quand le cas n'est que civil, comme dit ceste ordonnance, c'est à dire qu'il n'y gist que peine pécuniaire tant au Roy qu'á la partie, il suffit de décerner adjournement personel. Et doit l'accusé estre eslargi à caution, pourveu que ce ne soit pendant les délais, qui sont baillez

pour faire les confrontations. Toutesfois en cela ne peut estre donnée certaine regle, ains depend de l'arbitre du Juge. Pareillement, combien que la qualité du crime requiere emprisonnement de la personne, toutesfois, si la preuve n'est faite par tesmoins déposans du faict principal pertinemment; et qu'il n'y ait que conjectures, en ce cas, il suffit decreter adjournement personnel; Sinon que, pour la qualité ou vilité du chargé on voye qu'il y ait notable suspicion de fuite." Also at page 514—"Vive prison est appelée quand aucun donne bons pleges qui le prennent en garde, qu'ils le rendront au jour qui est dit, ou mort ou vif sans exoine, et sans delay; ainsi comme le Geolier le rendroit s'il estait en sa garde." Again, "*Vive prison.* Telle provision est ordonnée aux personnes notables, et d'honneste famille quand le cas n'est fort grief." Again, Book xii. chap. xxxv., at page 523, speaking of an offence to be prosecuted by procès ordinaire, he says, "cependant eslargir l'accusé à caution limitée, selon la qualité et l'excez du delict: et à la charge de se rendre en l'estat au jour de la reception de l'enqueste." There are also passages in Mr. Le Marchant's Book, pages 226 and 239, upon the subject.

4331. (To Mr. *Carré*). With regard to the taking bail or the amount of the bail, is the prisoner allowed to be heard by counsel upon that point?—I do not know of any case of the kind. I do not think an application to be heard by counsel would be refused. In all cases, upon the question whether it should be allowed or not, the advice of the Crown officers would be taken.

4332. Does the Cour Royale here exercise the jurisdiction of coroner?—Yes.

4333. Do they do so by members of the Court, or through some officer?—By the members of the Court.

4334. Not through the Prevôt, but immediately?—Yes.

4335. By the Cour en Corps, or by the smaller number?—The Bailiff and two Jurats constitute the Court.

4336. That is, the Court, the full body of which would be the Bailiff and four, the quorum being the Bailiff and two Jurats?—Yes, the Cour du Quartier.

4337. Are the Crown officers present?—Always; one of them.

4338. Is it a Court which sits super visum corporis? Is the body visited by the Court?—In cases of violence, or where violence is suspected to have been committed so as to require a subsequent trial, it is considered necessary that the body should be inspected by the Court.

4339. The *Procureur.* The Approbation is very clear upon that point in the 28th chapter 12th Book, "Nous usons de ce chapitre, réservé que le Bailiff et Jurez avec les Officiers de Sa Majesté ont la veüe des corps et aussi y appellent tels Surgiens qui pensent estre convenable."

4340. (To Mr. *Carré*). How is the Court put in motion in presiding as Coroners?—The constable, or any other person, reports the death to the Crown officers and to the Bailiff, by whom the matter is brought before the Court.

4341. The *Bailiff.* The case is not put off till the next sitting day, but generally the Court is specially summoned.

4342. Is evidence heard before the Court?—It is.

4343. Mr. *Carré.* The constables of their own authority, or on being required by the Crown officers, collect all the evidence which they can discover, and bring the witnesses before the Court.

4344. Is this proceeding au secret?—When brought before the Court it is au secret. The witnesses are examined separately and in private.

4345. Are they examined on oath?—They are.

4346. Does the inquiry go to the mode in which the death has been occasioned?—Yes: the cause of death is investigated, as completely as it is possible to discover from the evidence.

4347. Are medical men examined?—One medical man, at least, is almost invariably examined.

4348. If it should appear that death has been caused under circumstances which would lead to the supposition that a crime has been committed, does the Court upon that occasion proceed to trace the author of the crime as far as they can?—Certainly.

4349. Are the conclusions of the Crown officers heard?—They are.

4350. What is the technical name of the inquest?—It is called the "Levée de Corps."

4351—52. Do you distinguish between suicide in cases of mental aberration and suicide done wilfully?—Yes. I do not remember any case myself; but the form is different, and in the case of death by accident.

4353. Supposing the result is wilful murder against a party, is he then interrogated?—The investigation, upon which the act is drawn up, is used as evidence to authorise the Court to commit any person who may be accused.

4354. Does it take the place of the ordinary evidence au secret?—Yes. It may be made to form part of the usual investigation, au secret, but not necessarily so.

4355. In a case in which the evidence leads the Court to the result that the death has been caused by wilful murder?—In that case, if the party were not apprehended, the constable would receive orders to apprehend him.

4356. Is the conclusion come to before the party is heard or seen?—There are two distinct actes; the Levée de Corps, then the acte d'accusation and the interrogatoire.

4357. (To the *Bailiff*). How far does the Acte of the Levée de corps take the place of the other proceeding?—I think it forms but one step: it is not substituted for the acte d'accusation.

4358. Mr. *Carré.* It is quite distinct from the acte d'accusation: the Levée de corps is a distinct proceeding; but the Court, at the same sitting, may go on to investigate the accusation against the party.

4359. Supposing they go on to do so at the same sitting, the man being in custody, could they, the moment they had made up their minds that it was murder, call in the man, without hearing the evidence anew?—Certainly; they could do so.

4360. Would they read to the accused the evidence given on the Levée de corps?—Yes. But the evidence on the Levée de corps is never used beyond the day on which it is given.

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4361. We understand you to say that, if the person was within reach, the moment you had come to your decision on the Levée de corps, you would have the prisoner brought in and interrogated?—An acte of accusation would first be drawn up and read to him.

4362. Then you do not go through the evidence afresh?—No.

4363. Is the accused in the same position as if the evidence had been taken in the ordinary manner?—Exactly so.

4364. Mr. *Le Retilley*. That is not so. After the inquest has taken place, the accused or suspected person is brought before the Court; and, before he is committed finally, the witnesses declare upon oath sufficient to warrant the Court to commit him.

4365. The evidence is gone through formally again is it?—Yes; not to the extent it is upon the inquest, but sufficient to warrant the Court to commit the accused.

4366. The *Procureur*. The Levée de corps and the proceedings for the crime, I should say, are essentially different.

4367. Mr. *Carré*. I should say that the two proceedings are totally distinct. That would be proved by the origin of the proceedings in either case. The form in which the Levée de corps comes before the Court is this, "Les officiers de la Reine actionnent les témoins d'enquête pour découvrir comment un tel trouvé mort est parvenu à sa fin."

The *Bailli*. The act of the Levée de corps only states the cause of death, not the fact that it has been occasioned by a crime.

4368. (To Mr. *Lefebvre*, Greffier). Will you give the Commissioners the formal mode of stating the verdict in the various cases of Levée de corps?

*The following entries are read.*

No. 1.—In the case of Natural Death.

"Justice ayant éte informée que Henry Mauger, fils de Daniel, de la paroisse du Câtel serait mort ce matin, dans une maison, occupée par Jâques Berger, située au Haut Pavé en la paroisse de St. Pierre Port, et les officiers de la Reine ayant fait convenir un chirurgien et des témoins dignes de foi pour découvrir comment il est parvenu à sa fin, la Cour, après avoir entendu les dits témoins par serment, et ouies les conclusions des dits officiers de la Reine, a permis à qui il appartiendra de le faire inhumer en terre sainte, après qu'il a paru à la Cour que le dit Henri Mauger, qui a longtems été dans un mauvais état de santé, est mort subitement de sa mort naturelle, après être venu en ville consulter son medicin."

4369.—No. 2.—Violent Death by Suicide from temporary insanity.

"Justice ayant été informée que Pierre D'Orange, natif de Couville, département de la Manche, trouvé noyé, le 1 Mai, 1841, dans un puits, situé dans un courtil, en la paroisse de Clos du Valle, appartenant à Mr. Frederic Thomas Falla, et les officiers de la Reine ayant fait convenir devant elle un chirurgien et des témoins dignes de foi, pour découvrir comment il est parvenu à sa fin, la Cour, après avoir entendu les dits témoins par serment, ouies les conclusions des dits officiers de la Reine, a permis à qui il appartiendra de le faire inhumer en terre sainte, après qu'il a paru à la cour que le dit D'Orange s'est noyé lorsque dans un état d'ivresse et de délire momentane."

4370. No, 3.—Violent Death by Self-murder.

"Le dix-neufième jour du mois de May mille sept-cents cinquante-trois, devant Thomas Le Marchant, Esq., Lt. Baillif, présents Messrs. Jean De Havilland, James De Beauvoir, Wm. Le Marchant, Laurens Fiott, Daniel De Lisle, Samuel Bonamy, Jean Andros, Jean Ozanne, et Jean Guille, Jurez. Sur ce que Messrs. Josias Le Marchant, et Charles Andros, jun., deputy Prevost du Roy, auroient présentement fait raport à la Cour, que s'étant ce jour d'hui transportez au Château Cornet, pour amener en justice Jean Kemp, prisonnier à la suite des officiers du Roy, étant accusé d'avoir meurtri et occis Judith Le Normand, femme de David Jehan, de la paroisse de St. Sampson, et étant entrés dans la prison où le dit Kemp étoit détenu, d'avoir trouvé le dit Kemp mort, étant pendu par le cou avec ses jarretières; la Cour, sur ce, ouies les officiers du Roy, a ordonné qu'enquête sera incessamment faite, pour découvrir comment le dit Kemp est parvenue à sa fin.

La Cour s'étant ce jour d'hui transportée au chateau, vertu d'acte ci-dessus, pour faire enquête et découvrir comment le sus-dit Kemp est parvenu à sa fin, après avoir fait visiter le corps du dit Kemp par deux chirurgiens, et avoir examiné par serment douzet émoins dignes de foi, par le témoignage desquels il est évident que le dit Kemp s'est détruit lui même, s'étant étranglé la nuit dernière avec ses jarretières dans la prison où il étoit détenu pour crime du meurtre mentioné au sus-dit acte: la dite Cour, (après avoir oui les conclusions des officiers du Roy) a jugé que le dit Kemp est coupable du crime d'homicide de soi même, et est conséquemment, suivant aux loix, duement atteint et covaincu d'avoir cõmis le meurtre dont il étoit accusé; et, pour réparation desquels crimes, est ordonné que le corps du dit Kemp, sera, Lundy prochain, entre les dix heures du matin et les quatre heures de l'après midi, livré entre les mains de l'exécuteur des hautes œuvres pour être trainé sur une claye la harte au coû, et conduit au rocher, appellé la Heronnière, proche la Tounelle du Mont Orgueil (autrement dite la Tounelle aux Pendus), pour être là pendu avec des chaines de fer, et exposé sur une potence qui sera érigée sur le dit rocher pour l'effect; et sont Mr. Le Prevost du Roy et ses députés enjoints de faire deüement excécuter la présente sentence; et sont tous les biens meubles & héritages du dit Kemp, qu'il pourroit avoir, dans ce Baillage, confiscqués à Sa Majesté, ou aux Seigneurs de Fiefs à qui il appartiendra."

4371. No. 4.—Violent Death by Homicide.

Le seizième Novembre mil huit-cent vingt-cinq, devant Daniel De Lisle Brock, Ecuier, Bailiff, présens, &c. &c. &c.

La Cour, s'étant ce jour extraordinairement assemblée sur l'information donnée à Monsieur Le Baillif que le Sieur William Brown, natif d'Angleterre, et dernièrement résident en cette Ile, seroit mort d'une mort violente ce matin, environ les sept à huit heures, proche la maison qu'il habitoit, sur les Banques en la paroisse de St. Sampson: La Cour, s'étant transportée à la dite maison, où se trouvait le cadavre du dit William Brown, pour faire enquête afin de découvrir comment le dit Brown est parvenu à sa fin, et les officiers du Roi ayant fait convenir deux chirurgiens et plusieurs autres témoins dignes de foi, lesquels ont été examinés par serment, a permis, ouië la conclusion des dits officiers du Roi, de faire inhumer le dit Brown en terre sainte, après qu'il a paru à la Cour que sa mort a été causée

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par un coup d'arme à feu, tiré par J. J. Chapman, alias Melmoth, fils de Jean Ecuier, la charge de laquelle arme est entrée par devant et en dessous de la clavicule de l'épaule droite, et est sortie en derrière et au travers de l'épaule droite, après avoir coupé une artère et produit une hémorragie, qui a été la cause de la mort du dit William Brown, lequel est décédé quelques instans après, en dehors et proche la dite maison.

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*Robert MacCulloch*, Esq., further examined.

Robert MacCulloch, Esq.

4372. In reply to the 8th question of the first series of the Commissioners' questions, whether any functionary has, at any and what stages of the proceedings, the power of causing criminal proceedings to be abandoned, an instance was given of proceedings being abandoned when a party becomes evidence for the Crown?—That is one instance.

4373. You mean abandoned against that particular party?—Yes.

4374. We collect, from another part of the answers given, that you never charge prisoners two or three together in the same acte d'accusation, but that every man is tried singly?—Always.

4375. Does the abandoning of the proceedings operate as a formal acquittal of that individual, or merely guide the Crown officers in declining to prosecute him?—I think there is some doubt upon that point. In practice, I have never known proceedings recommenced after they had been so abandoned. In the case of a person admitted to give evidence, if he afterwards refused to give evidence, I apprehend the proceedings might be recommenced.

4376. Is it also in the discretion of the Crown officers to abandon the proceedings, if, at any step of the investigation, they find the evidence not likely to support the charge?—I take it they cannot abandon proceedings without the sanction of the Court.

4377. The proper course, then, is for the Crown officers to apply to the Court for leave to abandon the proceedings?—Exactly so.

4378. After hearing the conclusions of the Crown officers, the Court either comply with the application or refuse it?—I take it that, the act of Court which commits an individual for trial containing an order to the Crown lawyers to prosecute or implying such an order, the Crown lawyers cannot disobey that order, but must apply to the Court for permission to withdraw the proceedings.

4379. If the proceedings were abandoned by the Crown lawyers from some defect in the mode in which they had framed their accusation, for instance, if they had framed it in a way which would not hit the particular crime, would it, in that case, be competent for them to abandon the acte and bring forward the charge in another and a more correct shape?—Undoubtedly; some instances might be given, if it were necessary.

4380. The *Bailiff*. That would be probably expressed in the acte of Court.

4381. The *Contrôle*. The prosecution, in such a case, would be begun de novo.

4382. Would the acte of Court express the cause of the abandonment of the prosecution?—Yes.

4383. The *Procureur*. Here is a case of misnomer. A number of soldiers attacked a woman of the name of Emilie Du Chemin. In the indictment the word "Marie" was inserted instead of "Emilie:" and, on the day the prisoner was going to choose his counsel, the father of the woman happened to be present, and mentioned it. The Court made an acte; and the thing was rectified, and the prisoners tried afterwards.

4384. Does the acte of Court state the reason why the proceedings are abandoned?—Yes. There is an acte of Court to that effect.

4385. (To Mr. *Lefebvre, Greffier*). Will you produce it?

*The same was put in, and is as follows.*

Samedi, le vingt-huitième d'Avril, mil huit cent dix, devant Eléazar Le Marchant, Ecuyer, Lieutenant Baillif, présens Pierre De Jersey, Pierre De Havilland, Cartaret Priaulx, Jean La Serre, Josias Le Marchant, Henri Frederic Brock, Pierre Le Pelley, Jean de Lisle, et Jean Guille, Ecuyers, Jurés.

Daniel Fell, de la ville de Cork en Irlande, soldat, dans le 67$^{me}$ régiment d'infanterie en garnison en cette Ile, ayant été ce jourd'hui produit devant la Cour par le ministère de Frederic Price, Ecuyer, un des connétables de la ville et paroisse de Saint Pierre Port, étant accusé d'avoir, avec autres ses complices, félonieusement, environ les deux heures la nuit du 23$^{e}$ au 24$^{e}$ Avril, 1810, entouré sur le chemin public, proche l'église de la ville, Marie Du Chemin, fille d'Hellier, femme de Thomas Piseing, laquelle retournoit chez elle avec son mari, et ayant battu et excédé de coups le dit Piseing, et, tandis qu'il étoit empêché (iceux le tenant par force) de donner assistance à sa dite femme, avoir enlevé la dite Du Chemin, et l'avoir conduite par force et violence sur le Corps de Garde, et là avoir, le dit Fell, ou ses dits complices, commis le crime de rapt et de viol sur la personne de la dite Du Chemin, ayant deux d'entr'eux cohabité avec elle contre son gré et consentement, et avoir ensuite, le dit Fell, ou ses dits complices, par force et violence enlevé du dit Corps de Garde la dite Du Chemin, et l'avoir trainée dans un appartement sous la dite Garde, appellée le Strong Room, et là avoir, le dit Fell, ou ses dits complices, encore commis le crime de rapt et de viol sur la personne de la dite Du Chemin, quatre d'entr'eux ayant cohabité avec elle contre son gré et consentement.

La Cour, après avoir pris par écrit l'interrogatoire du dit Fell, a ordonné que le dit Fell sera constitué prisonnier au Château Cornet pour plus ample information.

Vendredi, le onzième de Mai, mil huit-cent dix, devant Monsieur le Lieutenant Baillif, présens &c.

Daniel Fell, constitué prisonnier au Château Cornet pour plus ample information, vertu d'acte du 28$^{e}$ Avril, 1810, ayant été ce jourd'hui, réproduit devant la Cour. Il a été ordonné, après avoir entendu des témoins dignes de foi, que le dit Fell sera constitué prisonnier au dit Château pour que les officiers du Roi informent contre lui.

Samedi, le dix-neuvième de Mai, mil huit-cent dix, devant Pierre De Havilland, Ecuyer, Baillif, présens, &c. &c.

Les officiers du Roi prouveront les fins de l'action qu'ils ont contre Daniel Fell de la ville de Cork en Irlande, soldat dans le 67$^{me}$ regiment d'infanterie en garnison en cette Ile, prisonnier au Château Cornet, à se voir adjuger au peines et punitions imposées par les loix, pour avoir, le dit Fell, avec autres ses com-

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plices, félonieusement, environ les deux heures la nuit du 23e au 24e Avril, 1810, entouré sur le chemin public, proche l'église de la ville MARIE, Du Chemin, fille de Hellier, femme de Thomas Piseing, &c. (*setting out the facts as before*). Après que le dit Fell a fait niance d'avoir commis le dit crime et a fait choix de l'Avocat Le Cocq pour son conseil.

Mardi, le vingt-deuxième de Mai, mil huit-cent dix devant Pierre De Havilland, Ecuyer, Bailiff, présens, &c.

La Cour, informée d'une erreur qui s'est glissée dans les procédures en crime commencées contre Daniel Fell, présentement prisonnier au Château Cornet, en ce qu'il est accusé d'avoir, avec autres ses complices, félonieusement commis divers crimes, et excès, portés aux Actes de cette Cour du 28e Avril dernier, et 11e et 19e de Mai courant, et, entr'autres, d'avoir, le dit Fell, ou ses dits complices, commis le crime de rapt et de viol, et autres crimes et excès sur la person de MARIE Du Chemin, femme de Thomas Piseing, au lieu que le nom de la dite femme du dit Piseing est EMILIE Du Chemin, *a ordonné que le dit Fell sera fait convenir de nouveau devant la Cour pour qu'il ait connoissance de la dite erreur, et qu'il réponde à l'accusation qui sera derigée contre lui*, tant pour les dits crimes et excès commis sur la personne de la dite Emilie Du Chemin, que pour les autres crimes portés aux dits Actes du 28e Avril dernier, 11e et 19e de Mai courant.

Mercredi, le vingt-troisième de Mai, mil huit-cent dix, devant Pierre De Havilland, Ecuyer, Baillif, présens, &c.

Daniel Fell de la ville de Cork en Irlande, soldat dans le 67e régiment d'infanterie en garnison en cette Ile, ayant été, ce jourd'hui, produit devant la Cour, conformément à l'acte de cette Cour du 22e du courant, étant présentement accusé d'avoir, avec autres ses complices, félonieusement, environ les deux heures la nuit du 23e au 24e Avril, 1810, entouré sur le chemin public, proche l'église de la ville, EMILIE Du CHEMIN, fille d'Hellier, femme de Thomas Piseing, &c. (*setting out the facts as before*).

La Cour, après avoir pris par écrit l'interrogatoire du dit Fell, et entendu par serment des témoins dignes de foi, a ordonné qu'il sera constitué prisonnier au Château Cornet pour que les officiers du Roi informent contre lui.

Samedi, le vingt-sixième de Mai, mil huit-cent dix, devant Pierre De Havilland, Ecuyer, Bailiff, présens, &c.

L'action de Daniel Fell de la ville de Cork en Irlande, soldat dans le 67e régiment d'infanterie en garnison en cette Ile, prisonnier au Château Cornet, contre les officiers du Roi—à voir la Cour faire droit sur l'action des dits officiers du Roi contre le dit Daniel Fell, à se voir adjugé aux peines et punitions imposées par les loix, pour avoir, le dit Fell, avec autres ses complices, félonieusement, environ les deux heures la nuit du 23e au 24e Avril, 1810, entouré, sur le chemin public, proche l'église de la ville, Marie Du Chemin, fille d'Hellier, femme de Thomas Piseing, &c. (*setting out the facts as before*); après que par acte du 19e Mai, 1810, il a été ordonné que les dits officiers du Roi vérifieraient les fins de leur action, après que le dit Fell a fait niance d'avoir commis le dit crime, et a fait choix de l'Avocat Le Cocq, pour son conseil, a été rejettée, et le dit Fell aux fraix.

Les officiers du Roi prouveront les fins de l'action qu'ils ont contre Daniel Fell de la ville de Cork en Irlande, soldat dans le 67e régiment d'infanterie, en garnison en cette Ile, prisonnier au Château Cornet, à se voir adjuger aux peines et punitions imposées par les loix, pour avoir, le dit Fell, avec autres ses complices, félonieusement, environ les deux heures la nuit du 23e au 24e Avril, 1810, entouré sur le chemin public, proche l'église de la ville, Emilie Du Chemin, fille d'Hellier, femme de Thomas Piseing, &c. (*setting out the facts as before*). Après que le dit Fell a fait niance d'avoir commis le dit crime, et a fait choix de l'avocat Le Cocq pour son Conseil.

Samedi, le septième Juillet, mil huit-cent dix, devant Pierre De Havilland, Ecuyer, Bailiff, présens, &c.

Daniel Fell de la ville de Cork en Irlande, soldat dans le 67e régiment d'infanterie, en garnison en cette Ile, prisonnier au Château Cornet, amerci envers les officiers du Roi, et est après preuve d'avoir le dit Fell, avec autres ses complices, félonieusement, environ les deux heures la nuit du 23e au 24e Avril, 1810, entouré, sur le chemin public, proche l'église de la ville, Emilie Du Chemin, fille d'Hellier, femme de Thomas Piseing, &c. (*setting out the facts as before*). Aux fins d'acte du 26e Mai, 1810, pour punition et réparation des quels crimes, est le dit Fell condamné à être réconduit prisonnier au Château Cornet, là être gardé en basse-fosse pour être, Vendredi prochain, livré à l'exécution de la haute Justice, pour par lui être conduit au lieu du supplice, la harte au col, et là être pendu par le col et étranglé, jusqu'à ce que mort s'en ensuive. Et sont ses biens meubles et héritages, si aucuns a, confisqués et acquis à Sa Majesté, ou au Seigneur du fief à qui droit aura; aprés les frais du procès pris sur iceux."

4384. (To Mr. *MacCulloch.*) Would it be competent, upon the proceedings recommencing, for the counsel for the party to insist that the charge, as then framed, was identical with the old charge, and that, therefore, the prisoner was entitled to his acquittal?—I should say decidedly not. It is the particular proceeding which is abandoned, not the right of prosecution.

4385. The *Contrôle.* Of course all amendments must take place before the trial has once begun.

4386. (To Mr. *MacCulloch.*) Question 13 is "Supposing a person charged confine himself to a denial of the facts, is he thereby concluded as to their relevancy." The answer of all the gentlemen to that is that a party denying the facts is not concluded as to their relevancy. At what time can that objection be taken?—On the trial.

4387. What would be the proper time to take the objection?—After all the evidence has been taken in writing.

4388. The evidence, au grand criminel, having been taken down in writing at previous meetings of the Court, we understand the trial commences by reading the whole of the proceedings, the plea of the prisoner, and the whole of the evidence taken; then the counsel for the prisoner is heard generally upon the case. Is that the proper time to take advantage of this objection?—Yes.

4389. Supposing the counsel for the defence were to say, "Taking all this as true, it is not a crime known to our law," would that objection be taken before or after the evidence is heard?—I have known it taken before, and after. Our general practice is to take the objection after the evidence has been gone into; but I have known many cases in which the objection has been taken before the evidence has been gone into. I recollect one case particularly, the

Crown *versus* Cumber, and the Crown *versus* Gallien for an alleged fraud. The objection upon that occasion was taken before any evidence was gone into, and the accusation was set aside.

4390. If the objection were taken before the witnesses were heard, and prevailed, what would be the consequence of it upon a subsequent accusation?—I have never known the question raised here. If you asked me my private opinion, I should say that a new accusation could be brought in proper form; but that is merely my private opinion.

4391. That, upon the face of it, would not be identical with the former one?—Certainly; and that is the principle upon which I give my opinion.

4392. In that case it would be the interest of the accused to take the objection after the evidence has been heard?—In general, I should say, it was; for it may often be the object of the defendant's counsel to shew, although the acte d'accusation does not contain, upon the face of it, an indictable offence, that, in point of fact, the accused is not guilty even of the facts alleged.

4393. In cases au petit criminel, you do not know your evidence till you hear it on the trial?—No.

4394. Then, by taking the objection afterwards, it would put the counsel for the defence in possession of the evidence to be brought against him on the second trial?—Exactly so.

4395. The *Bailiff*. The Commissioners ask what would be the effect, if the objection were taken; I apprehend the answer to mean that, if the objection is taken preliminarily, you may have another trial; if it is taken after evidence you cannot have another trial.

4396. Do you think, if the acte d'accusation were set aside on the ground that it did not, upon the face of it, set forth any crime, that would be any answer to a second accusation which did?—I do not know what would be done in that case. I do not exactly know what the form of the judgment would be supposing that to be the case.

4397. Mr. *MacCulloch*. In a case where an objection was taken before the evidence was gone into and the objection prevailed, the finding would be "action rejetée," and not "au silence."

4398. The *Bailiff*. In civil cases, the right of action is not touched; and Mr. MacCulloch appears to be of opinion that the same would be the effect in criminal proceedings; and I am inclined to think so too.

4399. In civil matters might not you bring the same action again in the same words?

4400. Mr. *MacCulloch*. No, not in the same words.

4401. The *Bailiff*. If it were after the evidence, I do not conceive it would be action rejetée.

4402. Mr. *MacCulloch*. I think not; I think, if the evidence had been gone into, and the acte stated, "Les officiers de la Reine à silence," then you could not bring the party to trial again.

4403. Are there any gentlemen belonging to the Court who fill the office of attorneys or écrivains?—There are none recognized by law, though, in practice, there are many who so act.

4404. What is the nature of the business which they transact?—It is rather difficult to define it.

4405. Are they officers of the Court at all?—Not in any way or shape.

4406. Are they persons who, not being regularly educated for the bar, get up cases, and put instructions into the hands of the advocates?—Yes; they very often hold a power of attorney from the parties concerned.

4407. The *Bailiff*. I do not know that, in criminal business, there would be any functions which they could exercise.

4408. (To Mr. *MacCulloch*.) Are the facts collected for the defence, in cases where the defence is at all complicated, by the gentlemen of the bar themselves?—They are to a certain extent; as far as they are able to collect them. But the means of collecting them are very limited. In general the advocate must depend principally upon the statement made to him by the party charged.

4409. In what way is the brief of the defendant's counsel collected together?—He has no brief at all. I may state that, in practice, the usual course is, after a party charged has chosen his counsel, as it is termed here, for the counsel to see the party at the prison, and collect the facts from him as well as he is able.

4410. In a case which might frequently arise, for instance, in indictments for forgery, the prisoner might misrepresent the effect of the evidence he expected very fatally. Would the counsel for the prisoner, generally, think it necessary to hear from the witness what he was going to say, without taking the prisoner's word for it?—In a case of any importance, the counsel for the prisoner would endeavour to see one or two of the principal witnesses, or would send a clerk to them to get as much information as he could.

4411. Wherever he thought a mistake would be dangerous?—Yes.

4412. It is sometimes very necessary to save people from their own witnesses?—I am quite aware of that.

4413. Supposing disbursements are necessary in the course of the cause, do they go through the hands of the counsel first?—There are no disbursements necessary.

4414. Take the case of procuring documents from England, which might be essential to proof of a prisoner's innocence?—I have never known such a case occur. In such a case, I should not feel bound, as the prisoner's counsel, to advance the money.

4415. We understand that, though the gentlemen of the bar consider themselves bound, where a prisoner has not the means to pay for it, to undertake his defence gratuitously, yet, where prisoners have the means, they are as much retained for them as in civil cases?—Yes; those cases are not very frequent.

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4416. In those cases, does the counsel make out his own account against his client?—He does in every case; and the reason of it is plain, that the advocates here perform the duties both of solicitors and barristers.

4417. Is there any kind of tribunal here to investigate the correctness of the costs?—I conceive it would be just the same as any private account between party and party. The account might be subjected to a decision of the Court.

4418. Does any such thing exist here as a right of action on the part of a counsel for his fees?—Yes: there is no taxing officer; but the Court would examine the account, just as in any other case.

4419. The Court possesses the power of displacing gentlemen of the bar, does not it?—I conceive the Court has that power.

4420. And of suspending?—Yes.

4421. Does the Court act of its own motion in such a case, or is there anything like a tribunal of honour?—There is nothing like a tribunal of honour.

4422. Would the gentleman be heard whose conduct was impeached?—I should think he would; it would depend upon circumstances.

4423. That would depend, perhaps, upon the good sense and conscience of the Court?—I think, entirely so.

4424. Is it the whole Court, or the Bailiff, who possesses the power?—The whole Court.

4425. Is there any appeal?—No.

4426. Before a gentleman is admitted an advocate, we understand there is no certificate necessary?—No.

4427. Is there any application or notice given to the Court?—There is an application or notice given to the Court.

4428. At what distance of time?—It varies very much; generally, at an interval of some months; but it is rather in the shape of a private application to each member of the Court. The practice has rather varied upon that subject.

4429. Mr. *Carré.* Frequently, notice has been given before the person commenced his legal education.

4430. That is, a gentleman, before he commences his legal education, endeavours to ascertain whether it is worth his while to do so?—It does not amount to that. At one time, there was a book kept, containing the names of persons who were candidates for the bar. They had their names inscribed before their education commenced.

4431. At that time, was any length of time necessary before the party could be admitted after inscribing his name in the book?—No.

4432. Mr. *MacCulloch.* That book was kept for some time; but some inconvenience arose from the circumstance that the party whose name was first on the list used to consider himself as primarily entitled to come in at the first vacancy. I believe it was agreed, afterwards, that the keeping of the book should be discontinued.

4432. How long ago is that?—Ten or fifteen years ago.

4433. Is the competition at all strong to come in?—Not at present; a few years ago there was some little competition.

4433. The *Procureur.* I think I am correct in stating that from 1806 to 1822 there were only three advocates at the bar. The greater part of the time there were only two, besides the King's officers.

4434. The *Contrôle.* From 1829 to this time, the bar has only been full two or three years.

4435. (To Mr. *MacCulloch*). Several gentlemen, in answering question sixteen, have used the expression, "after the plea is taken." What is technically the time when the plea is taken?—We understand it to be after the party charged has been committed for trial. He then is summoned by the Crown lawyers. The summons contains a copy of the charge; and he is then asked, are you Guilty or Not guilty.

4436. Is that in open Court?—Yes; it used to be before the full Court; now, by an Order in Council, it may be before any Court, or on any day.

4437. What is the ordinary time which elapses before the proceeding by interrogatoire would commence?—About a week. If a man is committed pour plus information, it may drag on for some weeks; but it is generally a week.

4438. From the interrogatoire to the plea is how long?—About two days, generally; seldom more than a week.

4439. How long is it from that to the trial?—It varies very much, according to circumstances.

4440. Would it be shorter au petit criminel?—In cases au petit criminel, or in term time, it would be from a week to a fortnight, at the most.

4441. In term time, how often does the Court sit?—Four days a week.

4442. The *Bailiff.* For criminal cases only on the Saturday.

4443. Mr. *MacCulloch.* The proper terms for proceedings au petit criminel, or au grand criminel, are these. The Chief Pleas are held the first Monday after the 15th of January; and the second Saturday after that is the commencement of the term for criminal cases; the term continues till the Saturday which precedes Passion week. The Chief Pleas, after Easter, are held on the first Monday after Easter week; the second Saturday after the Chief Pleas, the term commences, and closes upon the Saturday immediately preceding the 15th of July. The next Chief Pleas are on the first Monday after Michaelmas day; the term commences on the second Saturday after the Chief Pleas, and closes on the Saturday preceding Christmas day. Strictly speaking, criminal cases, after the committal for trial, or an Acte au Quartier, can only be tried during those terms. That explains the answer I previously gave,

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that, supposing a party to be committed for trial in term time, he would generally be brought to trial within a week or fortnight afterwards. The practice is, that out of term you cannot try any man against his will; nor do I consider the Court bound to try him even upon his request. But, in practice, parties charged are continually in the habit, through their counsel, of asking to be tried out of term; and the application is generally granted. I have, however, known some hesitation to take place when a crime has been of a very serious nature. I should have some doubts whether the Court would try a man for murder out of term. I know a doubt has been expressed upon the subject.

4444. In term, the interval from the interrogatoire to the pleading would be from Thursday to Saturday?—Yes.

4445. What is the interval from the plea to the trial?—A week or a fortnight, according to circumstances. If there are several parties in prison who have to be tried, it is impossible that they should all be tried on the next Saturday: and some delay may, occasionally, occur from the absence from the Island of material witnesses.

4446. May delay also arise from the mode of taking depositions au grand criminel?—I am speaking, now, of cases in which the depositions are not taken in writing. The delay would be longer, of course, from the necessity of taking the evidence in writing, which is a very tedious process.

[Adjourned to to-morrow at eleven o'clock.]

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*Wednesday* 30*th September,* 1846.

Mr. *Peter John Agnew* examined.

Mr. Peter John Agnew.

September 30th, 1846.

4447. The Commissioners understand you wish to make some observation to them.—I wish to observe that there have been no paupers sent out of the Island in my time, unless by their own consent, or by order of the Court. They were brought before the Court; and we obtained an acte of Court to that effect.

4448. When were you constable?—In part of 1828 and 1829.

4449. For the town parish?—Yes. I wish, also, to observe how much we are exposed to be imposed upon by some of these paupers. In April, 1829, a family came either from Manchester or Norwich. They were sent here by the authorities of that town. They came by the government packet from Weymouth. They applied to me for relief.

4450. How soon after their arrival?—On arriving. I placed them in the poor-house and desired the master of the poor-house to have them well taken care of, and to examine their clothes. The man was stripped; and, in the back of his waistcoat, was found a pensioner's certificate. He had given out, of course, in Manchester or Norwich, that he was a native of this place. The certificate being found, of course, we came to know where he was from.

4451. The certificate does not state the parish of his settlement, but the parish of his residence?—Yes. I produced the man in Court, and I had an acte of Court, which is registered at the Greffe.

4452. What is the nature of the imposition to which you wish to draw the Commissioners' attention in this case?—He gave out that he was a native of this place; and he and his wife and family were sent here.

4453. How did you find out that he was not a native of the Island?—We examined the parish books, and could not find his name here.

4454. Which parish books did you look at?—The town parish.

4455. Why did you select those books, instead of any other?—He mentioned the town parish.

4456. He himself said he was born in the town parish?—Yes.

4457. Are all births registered in the town parish books?—All baptisms are registered.

4458. Are persons of all persuasions baptized in the town parish?—Yes; I should say each church has its registry here.

4459. Do they baptize people of all sects in the town parish church?—Those that are born in the parish. Dissenters register in their own chapels. This man was returned to England with this acte of Court; and nothing more was heard of the person or his family.

4460. You sent him back to Manchester?—Yes.

4461. Who brought him?—One of the packets.

4462. Was he in charge of any person?—No: the master of the packet was bound to bring him, I suppose.

4463. There were no parish officers from Manchester or Norwich with him?—No.

4464. Do you ever recollect any parish authorities coming over here with paupers?—Yes.

4465. How long ago would that be?—It must have been in 1832 or 1833. My brother was in office at that time, I think; it was from St. Pancras.

4466. Do you recollect any Manchester authorities coming here?—No.

4467. In the St. Pancras case, did it turn out that the paupers were settled here?—It was not in my time.

4468. What became of the parish officers?

The *Procureur.*—A person, of the name of Capes, came here with several paupers. There was a doubt whether they were born in Guernsey; but they were all soldiers' children, and had no right to relief from Guernsey.

4469—70. Is it the rule that, if they were soldiers' children born in Guernsey, they have no right of relief here?—Yes. The person who brought them to the Island was ordered to take them away again. He did not do so. He was arrested; and a habeas corpus was sent over in

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the usual manner: and Sir John De Veulle, the Bailiff of Jersey, Mr. Dupré, King's Advocate in Jersey, and the late Mr. Brock, Bailiff of Guernsey, and myself, went over, as deputies from Jersey and Guernsey to London, in August 1832. The matter was represented to the Secretary of State. We had several interviews with him, and made different representations, but one in particular, which I have before me: and, finally, there was an understanding that the officer should be put out of prison.

4471. How came it that he was not taken to England under the habeas corpus?—We did not then hold that Writ to run in this island. It was before the late decision upon the subject. The officer was put out of prison. He embarked; and the paupers were put on board the same ship with him: and we have heard nothing more about it since.

4472. Is there an Ordonnance, or is it the custom that the children of soldiers in garrison born here do not thereby gain a settlement here?—It is the common law of the country. There is also the Ordonnance of 1821, the first article of which says: "Tout enfant légitime appartient de la paroisse de son père, quoiqu'il n'y soit point né; il suit, jusqu'à ce qu'il soit d'âge, les changements de paroisse de son père, et continuera, après, de la paroisse dont appartenait le père lorsqu'il est devenu d'âge, à l'exception des cas spécifiés dans la présente ordonnance."

4473. If any gentleman, born in England, had a child born here, would he be considered a Guernsey man?—No; not till he became of age.

4474. That law does not attach merely to soldiers in garrison, but it attaches to anybody, does not it?—Yes, to anybody. By the common law of the Island, whoever brings a stranger here, who becomes chargeable within a year and a day after his arrival, is bound to pay his passage back. An individual, for example, sends to England for a servant: that individual is bound to pay the passage of that servant back, supposing he or she becomes chargeable within a year and a day; and the captain of the vessel which has brought over a person who becomes chargeable within a fortnight after his arrival is bound to take him back at his own expense.

4475. Mr. *Agnew.*—I had an uncle who was residing at Southampton, about forty years ago: he brought a servant with him from Southampton. On bringing the servant here, he signed a bail of 50*l.*, at the Police office, that she should not be chargeable to the parish. Some little time after, she left his service and went to reside with another person, and was there some time. My uncle did not take the legal measure of going to the Police office to cancel his bail of 50*l.*: and that servant, some time after, was taken ill, and was taken to the poor-house; a bill was sent to him, and he had to pay about 38*l.* expenses.

4476. We are to understand the law to be that a person is in strictness bound to execute an instrument of that sort?—It is the custom.

4477. The *Contrôle.*—It is practised in the country parishes to this day. There is a printed form kept: and, when a person brings persons to the Island, in that way of a low class of life, they are bound to sign an instrument of that kind. We had a case of that kind about two years ago.

4478. The *Procureur.*—I have here the act of Court on the arrest of Capes the parish officer from St. Pancras.

*The same was read as follows.*

Hilary De Garis Agnew et Jean Mellish, Esc$^{s}$., Connétables de la ville et paroisse de S$^{t}$. Pierre Port, ont déclaré par serment que le Sieur Jean Capes, officier de la paroisse de Saint Pancras, en la ville de Londres, amena dans cet Ile, le 15 Décembre, 1831, ou environ, cinq pauvres présens, et, en conséquence, demande de faire arrêt de la personne du dit Capes, pour l'obliger à leur donner caution de cent livres stg., qu'il répondra jusqu' à fin de plaid et du jugé, en la cause qu'ils se proposent d'intenter contre le dit Capes, à se voir ajuger leur donner bonne et suffisante caution, qu'il répondra du maintien des dits pauvres, pendant leur séjour en cette Ile, aux fins d'acte d'amerci du 15$^{e}$ Décembre, 1831; et, Secondo, qu'il leur donnera bonne et suffisante caution de payer tous les fraix nécessaires pour renvoyer les dits pauvres hors de cette Ile, le dit Capes, au dit nom, étant tenu et obligé, tant au dit maintien qu'aux fraix de renvoi, suivant loi et coûtume. Et ce, si mieux n'aime le dit Capes, au dit nom, renvoyer les dits pauvres hors de cette Ile à ses fraix, le dit Capes étant sur son départ.

Sermenté le 23$^{e}$ Mars, 1832.
D. D. L. Brock, Baillif.

H. D. G. Agnew,
John Mellish, Jr.,
} Connétables.

En conséquence du serment ci-dessus et en l'autre coté, je permets aux dits Mess$^{rs}$. Agnew et Mellish, au dit nom, de faire arrêt de la personne du dit Capes, au dit nom, lequel amena dans cette Ile cinq pauvres, ou pieds poudreux, vers le 15$^{e}$ Décembre, 1831, lesquels sont à la charge de la dite paroisse, de faire arrêt de la personne du dit Capes au dit nom pour l'obliger à leur donner caution de cent livres stg., qu'il répondra jusqu' à fin de plaid et du jugé, en la cause que les dits Connétables se proposent d'intenter contre lui, à se voir ajugé primo leur donner bonne et suffisante caution qu'il répondra du maintien des dits pauvres pendant leur séjour en cette Ile, aux fins d'acte du 15$^{e}$ Décembre, 1831, et secondo qu'il leur donnera bonne et suffisante caution de payer tous les fraix nécessaires pour renvoyer les dits pauvres hors de cette Ile, le dit Capes, au dit nom, étant tenu et obligé tant au dit maintien qu'aux fraix de renvoi, suivant loi et coûtume. Et ce, si mieux n'aime le dit Capes, au dit nom, renvoyer les dit pauvres hors de cette Ile, à ses fraix, le dit Capes au dit nom étant sur son départ de cette Ile. Et au défaut &c.

Le 23$^{e}$ Mars, 1832. D. D. Le Brock, Baillif.

Je sous-signé, vertu de mon office et de la permission ci-dessus écrite, certifie avoir fait arrêt de la personne du dit Mr. Capes, sur quoi, les dits Connétables ayant déclaré au dit Mr. Capes être prêts de se satisfaire de sa promesse de ne point quitter cette Ile, sans prendre les dits pauvres avec lui, jusqu'à autre ordre, et le dit Capes promis de ne point quitter cette Ile aux fins que dessus: le 24$^{e}$ Mars, 1832.

Thomas Le Retilley, D$^{te}$. Prevôt du Roi.

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Mr. Peter John Agnew.

September 30th, 1846.

Je sous-signé, vertu de mon office et de la permission d'arrêt ci-dessus écrite, certifie avoir, ce jour, constitué le dit Mr. Capes prisonnier dans la prison publique, et ce, attendu qu'il est venu, ce jour, me déclarer qu'il ne vouloit plus continuer la promesse qu'il m'avoit donnée, le 24e Mars dernier, de ne point quitter cette Ile, sans prendre les dits pauvres avec lui, aux fins de mon rapport ci-dessus, quoique les dits Connétables lui ont déclaré être prêts de se satisfaire de sa dite promesse, comme par le passé, s'il vouloit la continuer; ce qu'il a refusé de faire, ou de donner la caution de cent livres sterling demandée dans la permission d'arrêt.

Guernesey ce 3e Août, 1832. THOMAS LE RETILLEY, Dte Prevôt du Roi.

Je soussigné, vertu de mon office, certifie avoir, ce jour, à la requête de Messrs. les Connétables relâché le dit Mr. Capes de prison.

Ce 8e Août, 1832. THOMAS LE RETILLEY, Dte Prevôt du Roi.

4479. The *Procureur.* By the custom of the Island any stranger liable to an action may be required to give bail that he will execute the judgment of the Court. The first proceedings in this case are contained in an Acte of the 15th December, which explains the view the Court took of the law.

*The same was read as follows.*

Le quinze Décembre, mil huit—cent trente—un, devant Daniel De Lisle Brock, Ecuyer, Baillif, présens Jean Le Serre, Pierre Le Pelley, Jean Le Pelley, Jean Le Marchant, William Collings, H. O. Carré, Frédéric Mansell et Pierre Bonamy Dobrée, Ecuyer Jurés.

La Cour s'est, aujourdhui, extraordinairement assemblée en conséquence de l'arrivée de John Capes, officier de la paroisse de St Pancras, en la ville de Londres, accompagné d'un homme de loi, et amenant ici cinq pauvres à charge à la dite paroisse, dont l'un, William Locker agé de dix neuf ans, est, disent ils, natif du Val, et les autres, James Streep, agé de dix neuf ans, dit natif de St Pierre Port avec sa femme et deux enfans, les dits Locker et Streep, tous deux, fils de soldats nés en garnison en cette Ile, le dit Capes demandant aux procureurs des pauvres et connétables du Val et de St Pierre Port présens de prendre, sur leurs paroisses respectives, la charge des dits pauvres, en vertu de l'Acte de Parlement du 19e Mars 1830,* enregîtré sur les records de cette Ile, le 18e Octobre 1831: la Cour, en faisant droit entre les dites parties, et après les avoir entendues, considérant que l'evénement casuel de naissance sous de pareilles circonstances ne peut assujettir les paroisses de cette Ile au maintien des dits pauvres; considérant que l'Acte de Parlement précité n'a en vue, ainsi que son titre le porte, que de régler le transport des pauvres, de prevenir les abus et les dépens dont se plagnaient les ports de Southampton et de Weymouth, comme le prouve la correspondance qu'eut lieu alors entre les autorités de Southampton, la Cour Royale et le Gouvernement de Sa Majesté, et d'obliger, à l'avenir, les paroisses, qui chercheroient à faire passer leurs pauvres dans ces Iles, à en supporter les frais; considérant qu'un Acte ainsi réglémentaire n'a pu changer les loix fondamentales du pays, loix qui n'ont rien de commun avec les loix d'Angleterre pour le maintien des pauvres, loix qui émanent, non des Actes de Parlement, mais de la volonté des habitans confirmée et mise en vigeur par les autorités locales légalement constituées; considérant que les enfans de soldats en garnison n'ont jamais acquis d'établissement à raison de leur naissance casuelle en cette Ile, et que quand même une loi le leur donnerait à l'avenir, elle ne pourrait avoir un effet rétroactif: la Cour, se fondant sur des principes de droit aussi incontestables, reconnaissant entièrement les dispositions de l'Acte du 19e Mars, 1830, quant aux pauvres qui ont de justes réclamations à l'assistance des paroisses de cette Ile, et prête, ainsi que ces paroisses, à recueiller tous les pauvres natifs et indigènes du pays, a jugé, sans entrer dans les raisons particulières qui sont alleguées, par les paroisses du Val et de St Pierre Port contre l'admission des pauvres mineurs en question, que les dites paroisses ne sont pas tenues du maintien des dits pauvres; par conséquent est le dit Capes à silence et aux fraix quant à sa dite demande, lequel sera tenu personnellement du maintien des dits pauvres pendant leur séjour en cette Ile.

4480. The *Bailiff.* The proceeding of the 15th December is not quite an action between the parties; the case was brought before the Court by all the parties having come before it; the expression au silence rather belongs to the case of an action.

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Mr. *William Moullin* examined.

Mr. William Moullin.

4481. Do you wish to address any remark to the Commissioners?—I wish, on the part of the Douzaine, not to individualize cases, but to explain the causes why paupers are sent away from this Island. When strangers apply to the constables, who are the parish treasurers for relief, it is given: but, when they find that they have no ostensible means of gaining a livelihood, they are forwarded to their parishes just as paupers would be forwarded from one parish to another, in England. It was stated by a gentleman that he had sent away a great number of paupers at their own request. In nine cases out of ten, paupers apply for passes: I may take this occasion to state that there are from forty to fifty families of strangers who receive allowances from this parish.

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*Charles De Jersey*, Esq., Procureur de la Reine, further examined.

Charles De Jersey, Esq., Procureur de la Reine.

4482. You have some returns to lay before the Commissioners?—Yes. Here are two books, one headed "Prosecutions au Criminal Ordinaire," from January, 1826, to December, 1845, inclusive. Here is a table of ten years, from 1836 to 1845 inclusive. This table states that two hundred and twenty four persons have been tried during the ten years. It then goes on

* The 11 G. 4 & 1 W. 4, c. 5. "An Act to repeal the Provisions of certain Acts relating to the Removal of Poor Persons born in the Isles of Jersey and Guernsey, and chargeable to Parishes in England, and to make other Provisions in lieu thereof."

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to state the number of persons tried au Grand Criminel, the number of acquittals, the number of persons condemned to transportation, the number of persons condemned to death, of whom there is not one, the number of persons fined, the number of persons condemned to imprisonment and banishment, the number of persons condemned to give bail, the number of persons condemned to imprisonment alone, the number of persons condemned to imprisonment and bail. Those who were English, Irish, Scotch, French, Guernsey, Jersey, Alderney, other countries, unknown. Under the article dismissed, when dismissed no record is made or kept.

4483. This does not contain the charges?—The books contain the charges. I have another table (*producing the same*) which distinguishes the different countries, from which those who have been tried came, and the number of persons fined; one English, one Irish, no Scotch, and so on. Here is the table for the Police Correctionelle, which I have headed "Summary Prosecutions, from January, 1836, to December, 1845, in the Court of Police Correctionnelle." The total for ten years is twelve hundred and one; the number of offences against property, the number of offences against the person, the number for disorderly conduct, and miscellaneous.

4484. The *Bailiff.* In the Police Correctionnelle, if a charge is made for any Police matter, and the person is acquitted, no entry of it is made. I do not suppose there is one person out of six who is brought up who is not either punished or committed.

*The Tables were delivered in.*

(A.)—TOTAL NUMBER of PERSONS TRIED, ACQUITTED, and CONVICTED by the ROYAL COURT at GUERNSEY, "AU CRIMINEL ORDINAIRE," and "AU GRAND CRIMINEL," from January, 1836, to December, 1845, inclusive; distinguishing the Numbers Tried, Acquitted, and Convicted in each Year, and the Country of the Offenders, and the Punishments.

| | 1836 | 1837 | 1838 | 1839 | 1840 | 1841 | 1842 | 1843 | 1844 | 1845 | Total for 10 Years. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Number of Persons tried "au Criminel Ordinaire" | 23 | 17 | 39 | 31 | 24 | 20 | 15 | 22 | 16 | 18 | 225 |
| Number of Persons tried "au Grand Criminel" | .. | 3 | 4 | 2 | 2 | 1 | 1 | 7 | .. | 3 | 23 |
| Total Number of Persons Tried | 23 | 20 | 43 | 33 | 26 | 21 | 16 | 29 | 16 | 21 | 248 |
| Number of Acquittals | 5 | 4 | 6 | 7 | 3 | 4 | 2 | 8 | 7 | 6 | 52 |
| Number of Persons condemned to Transportation | .. | .. | 1 | .. | .. | 1 | .. | 1 | .. | 1 | 4 |
| Number of Persons condemned to Death | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| Number of Persons Fined | 1 | 4 | .. | 1 | .. | .. | 1 | .. | .. | .. | 7 |
| Number of Persons condemned to Imprisonment and Banishment | 4 | 7 | 13 | 12 | 6 | 4 | 9 | 5 | 5 | 6 | 71* |
| Number of Persons condemned to give Bail | .. | .. | .. | .. | 2 | .. | .. | .. | .. | .. | 2 |
| Number of Persons condemned to Imprisonment alone | 13 | 4 | 23 | 13 | 15 | 11 | 4 | 15 | 4 | 8 | 110 |
| Number of Persons condemned to Imprisonment and Bail | .. | 1 | .. | .. | .. | 1 | .. | .. | .. | .. | 2 |
| English | 4 | 8 | 15 | 9 | 10 | 5 | 11 | 12 | 3 | 7 | 84 |
| Irish | .. | 3 | .. | .. | 2 | 3 | .. | 2 | .. | 2 | 12 |
| Scotch | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. | .. |
| French | .. | 2 | 2 | .. | 1 | 1 | 1 | .. | 2 | 1 | 10 |
| Guernsey | 16 | 6 | 16 | 12 | 10 | 11 | 4 | 12 | 8 | 7 | 102 |
| Jersey | 1 | 1 | 1 | .. | 2 | 1 | .. | .. | 1 | 1 | 8 |
| Alderney | .. | .. | .. | 3 | 1 | .. | .. | .. | .. | .. | 4 |
| Other Countries | .. | .. | 4 | 1 | .. | .. | .. | .. | .. | 2 | 7 |
| Unknown | 2 | .. | 5 | 8 | .. | .. | .. | 3 | 2 | 1 | 21 |
| Dismissed.† | | | | | | | | | | | |

* Of these, 21 were condemned to banishment *alone*.
,, 2 ,, exposure in the cage and banishment; no imprisonment.
,, 3 ,, flogged and banished; no imprisonment.
† When dismissed, i. e., not committed for trial, no record is made.

(B.)—TABLE distinguishing the different COUNTRIES of the OFFENDERS CONVICTED and SENTENCED by the ROYAL COURT at GUERNSEY, "AU GRAND CRIMINEL" and "CRIMINEL ORDINAIRE," from the Year 1836 to 1845 inclusively.

| | English. | Irish. | Scotch. | French. | Guernsey. | Jersey. | Alderney. | Other Countries. | Country Unknown. | Total. |
|---|---|---|---|---|---|---|---|---|---|---|
| Number of Persons Fined | 1 | 1 | .. | .. | 2 | .. | .. | .. | 3 | 7 |
| Number of Persons condemned to Imprisonment and Banishment including those Transported | 41 | 3 | .. | 7 | 16 | 3 | .. | 3 | 2 | 75 |
| Number of Persons condemned to give Bail | 2 | .. | .. | .. | .. | .. | .. | .. | .. | 2 |
| Number of Persons condemned to Imprisonment alone | 25 | 7 | .. | 2 | 66 | 3 | 2 | 2 | 3 | 110 |
| Number of Persons condemned to Imprisonment, and to give Bail after Imprisonment finished | 1 | .. | .. | .. | 1 | .. | .. | .. | .. | 2 |

(C.)—TABLE of the NUMBER of PERSONS CONVICTED by the ROYAL COURT at GUERNSEY, from January, 1836, to December, 1845, inclusive, in COURT of "POLICE CORRECTIONNELLE;" distinguishing the nature of the Offences.

| | 1836 | 1837 | 1838 | 1839 | 1840 | 1841 | 1842 | 1843 | 1844 | 1845 | Total for 10 Years. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Number of Persons summarily convicted | 138 | 115 | 94 | 152 | 152 | 98 | 105 | 102 | 125 | 110 | 1191 |
| Number for Offences against Property | 25 | 33 | 17 | 45 | 40 | 21 | 28 | 35 | 46 | 23 | 313 |
| Number for Offences against Persons | 44 | 35 | 15 | 10 | 43 | 26 | 18 | 15 | 23 | 23 | 252 |
| Number for Disorderly Conduct, &c. &c. | 40 | 24 | 36 | 22 | 32 | 31 | 31 | 17 | 27 | 19 | 279 |
| Miscellaneous | 29 | 23 | 26 | 75 | 37 | 20 | 28 | 35 | 29 | 45 | 347 |

*Thomas John Blondel Falla*, Esq., further examined.

Thomas John Blondel Falla, Esq.

4485. You are a good deal engaged in the defence of prisoners, are not you?—Very often.

4486. The Commissioners are informed that, when the defendant calls witnesses, the relevancy of the facts they are called to prove is a matter which the Court judges of before they are called?—Only au Grand Criminel, when the evidence is taken down in writing.

4487. A l'Ordinaire, does not the accused or his counsel deliver a list of the witnesses he proposes to call to the officers of the Crown?—No: perhaps, the Crown officers have a right to ask for a list; but I have never seen it done. It is necessary, however, that the summons should be signed by the Crown lawyers.

4488. Do they exercise any discretion as to signing the summons?—I have never seen any hesitation in doing so.

4489. There is a separate summons for each witness, is not there?—Yes.

4490. And each has the signature of one of the officers of the Crown?—Of one or both.

4491. The *Procureur*. The forms were sent to the Commissioners.

4492. (To Mr. *Falla*.) Does the counsel for the prisoner, in a case au Grand Criminel, state, on applying for a summons, what facts he wishes to prove?—Yes: then the Court decides whether the prisoner is to be admitted to prove those facts: afterwards the prisoner gives a list of the witnesses he wishes to call.

4493. If the Court say this fact is not relevant, is the counsel heard to argue that it is?—Yes.

4494. Does the Court decide upon hearing both sides?—Yes; upon, first of all, hearing the counsel for the prisoner, and, afterwards, the conclusions of the Crown lawyers.

4495. Are the limits of relevancy tolerably wide?—Yes; I should say so.

4496. Do you think the Court would be very cautious in refusing a witness?—Very cautious indeed. In my long practice, I do not think I have seen one instance where the Court has refused facts.

4497. Have you heard points of this kind argued?—I have.

4498. There is an expression, in the answer of one of the gentlemen, that the witnesses of the prisoner are cross-examined by the Crown Officers. Are the Commissioners to take that in the sense in which they are informed the duty of the Crown Officers is understood in this Island, not as adverse counsel but as a kind of advisers of the Court?—I presume their duty is to bring before the Court all the facts. Upon the witnesses of the accused being produced at the bar, his counsel, of course, questions them: after that, the Crown Lawyers have a right to cross question those witnesses.

4499. Is the practice, in that case, to conduct it as an adverse counsel, or in the character rather of a judicial party?—From my experience, I should say that the Crown Lawyers wish to elicit truth.

4500. Supposing on any occasion a very adverse tone on the part of the Crown Lawyer were exhibited, would it be thought a deviation from the ordinary practice?—Yes; I think it would. I do not mean to say I have never heard that tone used.

4501. But, when used, is it considered a deviation from the usual practice?—I do consider it so.

4502. Would it be used in any case in which the Crown or the Court was interested? Would not the Crown Officers, in such cases, acting as advocates for the Crown, endeavour by all proper means to secure a verdict?—No.

4503. The counsel for the defendant is of course a partizan; in case the Crown lawyer acts in the same way, as a partizan, is it considered that he is exceeding his duty?—I think so.

4504. Do you consider it no part of the duty of the Crown Officers to strive as advocates for a conviction?—No.

4505. If it should so happen that the counsel for the prisoner had neglected a point in favour of his own client, would you think it the duty of the Crown Officers to bring it forward?—I consider it would be their duty; and I have seen it done often.

4506. Would they supply any point omitted by the counsel for the defence?—I consider it is their duty to do so, by our practice; and I have seen it very often done.

4507. When a prisoner is produced at a trial, à l'Ordinaire, is the acte d'accusation read as a matter of form before the interrogatories are read?—The acte d'accusation is first read; the

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witnesses for the prosecution are then called; then the witnesses for the defence are called by the prisoner. They are sworn if there is no objection to any of them.

4508. If there is an objection to any of the witnesses, is it heard and decided upon argument?—Yes.

4509. Does not the interrogatory of the prisoner begin the evidence?—Yes.

4510. In trials au Grand Criminel, when evidence is taken down, is it taken down by the Greffier?—Yes.

4511. Does he read it out aloud after it is taken down?—It is not taken down in the presence of the counsel or of the prisoner.

4512. It is taken au secret in the first instance?—Yes.

4513. (To Mr. *Lefebvre,* Greffier.) How long have you been Greffier?—Since 1835.

4514. Will you explain the mode of taking down the evidence au Grand Criminel? Suppose the previous examination au secret over, the acte d'accusation drawn, the interrogatoire taken, and the prisoner committed, we are now at the next step: before whom is the evidence taken?—The examination of witnesses takes place in the presence of the Bailiff and at least two Jurats.

4515. Whenever you say Bailiff, may we take for granted you mean also Lieutenant Bailiff?—Yes. Questions are put to the witness by either of the members of the Court or the Crown Officers; and I take down the answers. The witness is made acquainted with the charge against the prisoner, and is told to declare what he knows respecting the matter. He makes a statement, which is taken down; and afterwards questions are put to him, if the whole of the facts are not made clear to the satisfaction of the Court.

4516. Is this all au secret?—Yes.

4517. Is more than one witness present at the same time?—No; only one witness is present in the Court.

4518. Who generally puts the questions, the Crown Officers or the Court?—The Crown Officers generally take the leading part in questioning the witnesses.

4519. You say, first of all, the witness makes his statement: that you take down from his own mouth?—Yes.

4520. Suppose a question is put, do you read the question?—Yes; and I then take down the answer to that question.

4521. Is the question read over to the witness from your note?—Yes.

4522. A question being put, you write that question down upon your note, read from your note the question to the witness, hear his answer, and write it down in your book?—Yes.

4523. At the end of the examination is the evidence read afresh to the witness?—It is usually; but it is not the invariable practice.

4524. Mr. *Dobrée.* I think it is always done: I have never seen it otherwise.

4525. Does the witness sign it?—No.

4526. Do you sign it?—I sign the copy I give to the Crown Officers.

4527. Is the deposition signed by any body?—The Bailiff and the two magistrates who are present put their initials. It is called paraphé by the Court.

4528. Do you keep the deposition of the witness?—Yes.

4529. Do you take it down in the first person or the third?—In the first person.

4530. You do not say "He does not know," but "I do not know?"—Yes; in the first person, from the man's mouth, "I saw so and so."

4531. The person making a statement would give a general account of things, in which would be found a great number of matters which would not be in the strict sense evidence; are these afterwards struck out of the statement?—No; nothing is struck out.

4532. In the statement made by a person there would naturally be many things that were not in the strict sense evidence?—Upon the witness's deposition being read to him, if he finds have misunderstood him, he corrects me.

4533. The question refers to a case in which a witness says, "Mr. so and so told me such and such a thing;" is that altered?—No; it is taken down, and remains part of the evidence.

4534. Mr. *Andros.* The Court would check any such statement at the time.

4535. The *Contrôle.* Every thing which the witness says is not taken down.

4536. Mr. *Lefebvre,* Greffier. If the Court observes that the witness is saying any thing which is irrelevant to the matter or hearing, the Court would tell him, that is not evidence, or that is not relevant to the case.

4537. The evidence is taken down from the mouth of the witnesses, with the exception of the parts which the Court directs to be omitted?—Whatever the witness wishes to be taken down I think would be inserted in the deposition.

4538. (To Mr. *Carré.*) Supposing a man is tried for murder, and the witness says the prisoner's wife told me that the prisoner did so and so, should you feel bound to check that as hearsay?—I do not know that the Court would take upon themselves to decide, at that moment, what was evidence or not: that would be the business of the Advocate afterwards.

4539. Mr. *Lefebvre,* (Greffier.) In practice they have not done so.

4540. Mr. *Carré.* I should say the Court exercise very little discretion upon that point, whether certain matters are legal evidence or not. That would be left for after consideration, and might be argued by the counsel for the prisoner.

4541. The *Bailiff.* That would be as in England, where sometimes it happens that matter, which is not evidence, occurs in answers to written interrogatories.

4542. In that case the party who takes the interrogatory is not the party who tries the fact?—No. I think that, in practice, when a witness is rambling to matters which are irrelevant, he is checked by the Court.

4543. Should you include in that hearsay evidence?—Yes; I think the Court would then direct him back again into the line of evidence; and, if he continued to be rambling, they would begin to question him, so as to cut short his irrelevant statement.

4544. Do you not think it possible that you, from your habits as an English lawyer, may adopt a different practice from that which Mr. Carré would take?—It is possible to some extent.

4545. Mr. *Carré.* What I say is, that the Court, if composed of a Bailiff and two magistrates, would not take upon itself to decide, in every case, what was evidence and what was not. While under examination, the Court would endeavour to keep the witness as closely as possible to what was evidence.

4546. The *Bailiff.* I think I have only been present at one case au Grand Criminel; and there almost all the evidence was taken down by way of question and answer.

4547. (To Mr. *Lefebvre,* Greffier.) Are those the only examinations of witnesses which take place au secret, witnesses in support of the charge against the prisoner?—The witnesses for the defence are also examined au secret.

4548. Are they examined in the absence of the prisoner or prisoner's counsel?—No: the prisoner and his counsel are there; but the public are excluded.

4549. Are they examined in the same way?—Yes.

4550. Except that the counsel for the prisoner is there to put any questions or make any suggestions which he likes?—Yes.

4551. Is the evidence taken in French or English?—In the language most familiar to the witness.

4552. And the question put in the same language?—Yes.

4553. The question to an English person is, of course, put in English?—Yes.

4554. In the case of the witness being a foreigner, an Italian, or a Dane, or Dutchman, is an interpreter sworn?—Yes; one would be sworn.

4555. You are allowed to exercise your office by a sworn Deputy, are not you?—Yes.

4556. What time elapses between the "évocation" of the witnesses and their appearance in Court?—No lapse of time takes place; they are examined immediately afterwards.

4557. Between their notice to appear and their appearing?—That depends upon the Crown Officers sending their summons. The Greffier has nothing to do with that: he finds the witness in Court.

4558. When does the act of récolement and confrontation take place?—It takes place before the witnesses for the prisoner are called.

4559. (To Mr. *Falla.*) After the evidence has been taken, are copies sent to the prisoner's counsel?—Yes; by a late order in Council, the evidence is sent to him on the morning of the confrontation.

4560. Have you any means of preventing parties capable of giving evidence from leaving the country?—Yes.

4561. How long has that been so?—Under the same order in Council.

4562. (*The Order in Council was read as follows.*)

At the Court of Buckingham Palace, the 19th day of June, 1844.

*Present*—The Queen's Most Excellent Majesty; His Royal Highness Prince Albert; Lord President; Earl of Aberdeen; Lord Privy Seal; Earl of Ripon; Duke of Wellington; Lord Granville Somerset; Lord Steward; Lord Stanley; Lord Chamberlain; Sir Robert Peel, Bart.; Earl of Jersey; Sir James Graham, Bart.; Earl of Haddington.

Whereas there was this day read at the Board a Report of the Right Honourable the Lords of the Committee of Council for the affairs of Guernsey and Jersey, dated the 18th of this instant June, in the words following, viz.: Your Majesty having been pleased, by your order in Council, of the 23d of May last, to refer unto this Committee the humble petition of the states of the Island of Guernsey, setting forth: "That, there being no local law to authorize the detention in the island of witnesses in criminal prosecutions, the Court of Chief Pleas, at a meeting held on the 22nd of January, 1844, passed an Ordinance, subject to the approval of the States and the confirmation of your Majesty, to supply the said defect as follows:—

"La Cour, sensible combien il est essentiel à l'administration de la justice criminelle qu'il soit loisible aux officiers de la Reine de pouvoir détenir dans l'Ile, pendant un temps suffisant pour son examen, récolement et confrontation un témoin nécessaire, qui serait sur son départ, a ordonné, ouies les conclusions des officiers de la Reine:

Primo. Que, dans tous les cas d'accusation criminelle, il sera loisible aux officiers de la Reine de suivre l'accusé en tous tems et devant toute Cour composée du President et de deux Jurés pour le moins, pour l'obliger à choisir un conseil.

Secondo. Qu'en cas de félonie, les officiers de la Reine seront autorisés à obliger un témoin nécessaire, étant sur son départ, de rester trois jours dans l'Ile à compter du jour de la constitution du prisonnier, afin d'être examiné provisoirement à futur, et pourra le dit témoin, dans ce cas, être récolé et confronté avec le prisonnier le même jour, et immediatement après avoir été examiné.

Tertio. Que l'interrogatoire sera donné au conseil du prisonnier dès que les témoins des officiers de la Reine auront été examinés à futur.

Quarto. Que les dépositions des témoins seront données au conseil du prisonnier le matin du récolement et confrontation.

That, much inconvenience and delay resulting from prosecutions for the breach of local police laws having to be made only in form, and before a Court composed of the Bailiff and at least seven Jurats, the said court of Chief Pleas on the said day, 22nd January, 1844, passed another Ordinance, subject also to the approval of the said States and the confirmation of your Majesty, authorizing, *inter alia*, such prosecutions to be made at all times, whether in or out of term, and before any Court composed of the Bailiff and two or more Jurats; provided that the maximum of the fine stated in the violated law did not exceed thirty livres tournois, or *2l. 2s.* 10½*d.* sterling, as follows:—

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"La Cour ayant pris en considération le rapport du comité nommé par la Cour en Chef Plaids le 24 Avril, 1843, pour examiner la manière de procéder rélativement à ceux qui enfreignent les Ordonnances, et qui, d'après la loi actuelle, ne peuvent être légalement suivis que dans les termes et devant la Cour criminelle composée du President et de sept Jurés pour le moins, a ordonné, ouies les conclusions des officiers de la Reine:—

1°. Qu'à l'avenir il sera loisible de suivre toute infraction d'Ordonnance en aucun temps, soit dans ou hors des termes, devant une Cour composée du President et de deux Jurés pour le moins, pourvu que le maximum de l'amende portée dans l'Ordonnance n'excède pas £30 tournois.

2°. Le délinquant, dans les vingt quatre heures qui suivront le service de l'ajour, sera tenu de payer le minimum de l'amende, avec les frais de l'ajour et port, au Sergent de la Reine, faute de quoi, tant les officiers de Sa Majesté que l'accusé ajourneront leurs témoins sur le champ pour être entendus au jour indiqué dans l'ajour, envoyé par les dits officiers de Sa Majesté au délinquant.

3°. Dans le cas que le poursuivi ne réponde pas sur le premier ajour, l'appointement de "vers arrêt et aux frais" sera pris; et le poursuivi, s'il veut plaider par la suite, ne pourra le faire qu'en payant tous le dépens du passé.

4°. Que toute amende adjugée sera payée sur le champ sur peine d'emprisonnement d'autant de jours que de livres tournois adjugées.

5°. Qu'en cas que la Cour condamne l'infracteur aux frais et journées de témoins, il sera tenu de les payer, ainsi que l'amende, sur le champ.

6°. Que les amendes seront applicables moitié à Sa Majesté et moitié au délateur, au lieu d'être applicables comme dans les susdites Ordonnances, à quoi recours."

That, the term within which personal actions and suits relating to personal property may be instituted in Guernsey extending to thirty years, and it appearing that the interests of justice, the security of all classes, and especially the protection due to heirs, would be greatly promoted, were the said term considerably abridged: the said Court of Chief Pleas, at a meeting held on the 11th of April, 1836, passed an Ordinance reducing to ten years the term within which actions in personalty or simple contract, and without specialty, may be instituted, the said term to reckon from the 1st of June, 1836, with regard to all debts or demands created subsequently to that date, and barring by the lapse of ten years from the said day, 1st June, 1836, all right of action for debts or demands created antecedently thereunto, and which, under the existing law, might have more than ten years to run out, as follows:—

"La Cour a ordonné provisoirement, ouies les conclusions des officiers du Roi: 1° Qu'à compter du 1er Juin, 1836, toute demande mobilière par après crée, et pour laquelle il n'y aura ni reconnoissance par écrit, ni acte de Cour non-périmé sera prescrite après dix ans de sa création. 2°. Que les préscriptions commencées, et pour le completement desquelles il faudra encore au delà de dix ans à compter du 1er Juin, 1836, seront accomplies par le lapse de dix ans, à compter du dit jour. Et ne déroge cette Ordonnance aux préscriptions annales portées dans le 29e Chapitre du Livre 8 de Terrien."

That, the said three Ordinances having been submitted to the States of Guernsey, at a meeting held on the 27th of March, 1844, the said States unanimously approved of the same, and resolved that they should be submitted to your Majesty in order that, if approved by your Majesty, they might receive your Majesty's most gracious confirmation, and, thereupon, have force of law in Guernsey, and humbly praying that your Majesty may be graciously pleased to confirm the said three Ordinances, and to order that they shall thenceforth have force of law in Guernsey.

The Lords of the Committee, in obedience to your Majesty's said order of reference, this day took the said petition, and three Ordinances of the 22nd June, 1844, and 11th August, 1836, into consideration, and agree humbly to report, as their opinion, to your Majesty, that it may be advisable for your Majesty to approve of and ratify the said three Ordinances.

Her Majesty, having taken the said report into consideration, was pleased by and with the advice of Her Privy Council to approve thereof, and to order, as it is hereby ordered, that the said three Ordinances passed by the Court of Chief Pleas in the Island of Guernsey, and approved by the States of the said Island, be approved and ratified accordingly. Whereof the Lieutenant-Governor of the Island of Guernsey, the States of the said Island, and all other persons whom it may concern, are to take notice, and govern themselves accordingly."

4563. Are there any means of keeping a witness for the defence from leaving the Island?—That is not stated: but, I conceive, the Crown lawyers have the means of doing so, because the witnesses for the defence are summoned also by the Crown lawyers. If I am called upon as a lawyer to read that order in Council, I should say that it does not extend to witnesses for the defence.

4564. Then there would be no legal means of detaining them?—Not by that order in Council: but, having explained the way of our proceeding in Guernsey, that all the witnesses are summoned by the Crown lawyers for the prosecution and the defence, I should think they have a right, if requested by the prisoner, to stop the witnesses for the defence.

4565. What would be the actual means of stopping them?—That I am at a loss to say. It is not defined. I should say, of course, if there is an Order in Council to be put in force, the Crown lawyers must have the means of doing so. They may call upon the persons to give bail that they will be forthcoming on such a day to give evidence; and, if they do not, I think they have a right to secure their persons.

4566. Do you recollect any instance of that?—No.

4567. The *Procureur*. There is no instance, I believe.

4568. The *Contrôle*. In ninety nine cases out of a hundred the witnesses essential to the case, whether for the prosecution or for the defence, would be among the witnesses called by the Crown.

4569. The *Procureur*. All the witnesses, in a criminal proceeding, are, strictly speaking, Crown witnesses. The Crown sends the summonses. Sometimes witnesses are examined "provisoirement;" the meaning of the word "provisoirement" is this, both in civil and criminal cases, that, if a witness were likely to leave the Island before the case came forward, you would take a permit to have him examined provisoirement before the others were examined. He is examined in writing; his deposition remains closed at the Greffe till the others are examined; and then there is an order given to open them altogether.

4570. At all events, would it ot have this effect, that it would make it necessary for a party charged at the time of his being constitué prisonnier to know who his witnesses were to be? The limit given is three days: he might be committed, and, four days afterwards, recollect what witnesses he wanted?

4571. Mr. *Falla.* That was my reason for supposing that this was meant to apply to witnesses for the Crown strictly so called, because that could never happen as to them.

4572. The *Bailiff.* A man is constituted a prisoner before any witnesses are heard.

4573. Does not the preliminary proceeding, which leads to his being constituted a prisoner, to a certain extent, bring to the knowledge of the Court and the Crown officer, who the witnesses on the other side are?—Yes, to a certain extent.

4574. The *Procureur.* It is a case which has never taken place: but, if the case were to take place, and the man were to be committed, and to give notice to the Crown lawyers that he wished to have certain persons examined, the Crown lawyers would take means to have them examined.

4575. The *Bailiff.* It is quite clear that this Ordinance contemplated a witness who had been examined in the Court of Police. He might have been examined then, on either side, for the prosecution or for the defence.

4576. (To Mr. *Falla.*) After the récolement et confrontation, what takes place?—The prisoner is bound to state the facts he wishes to prove, and, at the same time, to give a list of the witnesses to prove those facts.

4577. Is it understood that he is bound to state, which witness proves any particular facts?—I have never been bound to state by which witnesses I meant to prove any particular fact. I do not mean to say it has never been done; but in my practice I have never seen it done.

4578. Then, in truth, the power of the Court to prevent a witness from coming is nominal?—It is only with respect to the facts, whether they are relevant or not. The Court would never prevent a witness being heard, in my opinion; I have never seen it done.

4579. The *Bailiff.* The Court, having allowed a particular fact to be gone into, would never object to any witness being heard in support of that fact.

4580. What takes place at the Confrontation?—The Counsel for the prisoner has a right to cross-examine the witness. Each witness is called, one after the other, in the presence of the prisoner; his evidence is read; and the counsel for the prisoner has the right to cross-examine the witness. The question is put down in writing by the Greffier; and the answer of the witness is also taken down.

4581. Is all this au secret still?—Yes. The Crown lawyers (I have seen it done in practice, and I believe they have the right of doing it) can put any question to the witness again; and so can the Court.

4582. The Crown Officers ask any questions they please upon the cross-examination of the prisoner's counsel?—Yes.

4583. Are the witnesses for the prisoner summoned for some future day?—The Court fixes a day to hear those witnesses. They are called, one after the other; and their evidence is taken down in the presence of the prisoner and his counsel.

4584. By means of questions?—Yes: but, generally speaking, the counsel will tell him, at least I do, to give his statement of the facts which he knows: and, in my opinion as a lawyer, I think it is more fair. Then, having given his statement, the counsel has a right to put questions. The Crown lawyers the same; and, of course, the Court has the same right.

4585. After being cross-questioned by the Crown Officers, would the counsel for the prisoner have a right to re-examine upon the cross-questions put by the Crown Officers?—I have seen it done. The right has never been questioned. I beg to state that I have explained our manner of proceeding, although as a lawyer I am decidedly opposed to that manner of proceeding.

4586. This proceeding au Grand Criminel you mean?—Yes.

4587. What is your objection to it?—My principal objection is this: that, when a witness is examined, the first time, it ought to be in the presence of the prisoner. My second objection to it is this: that it is not possible for the Court, who tries a prisoner, to know the exact meaning, or the strength of the evidence of the witness.

4588. The Court not having seen him?—No.

4589. You think a statement may mean one thing in one tone of voice, and another in another?—Yes.

4590. Do you apply that remark, as to the evidence being heard in the presence of the prisoner, to the evidence which precedes the committal, as well as the evidence at the trial?—I allude to evidence after the committal, principally. I am now explaining our proceeding after committal.

4591. With regard to the evidence which is taken at the committal, do you think it ought to be, as it is now, au secret, or that it ought to be heard by the prisoner?—To give a fair chance to a prisoner, if we had not the Crown lawyers in the Court who are bound to look to the defence of the prisoner, I should decidedly say that the witnesses for the committal should be heard in the presence of the accused.

4592. Do you think that the evidence, given before committal, should be preserved, and put in the hands of the prisoner or the prisoner's counsel afterwards?—I should say the witness should be heard in the presence of the prisoner. Every lawyer, if he consults the interest of the prisoner, and wishes to give him security that he should not be found guilty when he is innocent, would say that he ought to have a copy of the examinations of the witnesses. I say so from experience, because I am always at a loss to know what defence to make for a prisoner. When I say what defence, I mean what witnesses to call.

4593. Is not that rather stronger in cases à l'Ordinaire than au Grand Criminel, because

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there is less interval?—Yes. I was going to state, just now, that I think the evidence should be taken down in the presence of the prisoner au Grand Criminel, when the witnesses are examined from the beginning. Then his counsel might see in what manner the witness declares: but, now, it is not possible for a counsel to do that justice to his client by only hearing the evidence read to him.

4594. He loses also the means of commenting, before those who are to decide the matter, upon the mode in which the words came from the witness. Yes; but, in cases au Grand Criminel, I should say, the counsel is in very great danger of injuring the cause of his client by putting questions to a witness; and I have seen it done more than once.

4595. Mr. *MacCulloch.* There is another class of objections to the mode of taking evidence au Grand Criminel. The objection in general terms is this: that, in many instances, a great deal of matter is let in, which may afterwards be declared to be irrelevant, and which, though not evidence, may, in some degree, influence the members of the Court, who have knowledge of that matter. I will instance a case. It has been already stated that these examinations take place before the members of the Cour du Quartier, who do not, and cannot, I conceive, take upon themselves to decide any questions before them, the prisoner being entitled to the decision of the Cour en Corps on any matter of the sort. Suppose any question to be started as to the relevancy of certain facts, the Court would not decide the point, but take down the evidence, reserving to the prisoner the right of objecting to its relevancy, on the trial. On the trial, the Court might say, this ought not to be received; it is not evidence; we order it to be struck out; yet, notwithstanding, the statement made by the witness will be known.

4596. Might it not make the greater impression from the very discussion as to its relevancy?—Yes. Then another objection may arise, which is this: supposing a witness be objected to altogether, suppose the prisoner says, at the confrontation, "Such and such a person ought not to be heard, because of such and such a cause," his evidence would already have been taken, and would be known to the members of the Court, who were present; further, the Court would, notwithstanding, proceed to the récolement et confrontation, taking a note of the objection made and reserving it for the trial.

4597. Are you now speaking of the Cour du Quartier?—Yes. They would make a note of the objection and the grounds of it, and declare that the examination shall go on notwithstanding, sans préjudice au droit du dit prisonnier de faire valoir sa dite objection en temps et lieu, that is upon the trial. In that case, the objection may perhaps be found good, and the evidence of the witness struck out of the depositions: but, notwithstanding that, the evidence would have produced certain impressions on the minds of those members of the Cour du Quartier who were present when it was taken.

4598. Might not that last objection be met by insisting that the Court for taking the evidence and trying the fact should be constituted of different members?—That last objection might.

4599. (To Mr. *Falla.*) In cases au Petit Criminel the witnesses are examined vivâ voce, are not they?—Yes.

4600. Is there not a previous list of the witnesses for the defence given to the Crown officers?—There is not a list given to the Crown lawyers of the witnesses for the defence: they only sign the summonses.

4601. Blank summonses?—No, filled up by the counsel for the prisoner, where the names of the witnesses are stated. They may take a list if they think proper.

4602. Is the summons signed by the Crown officer before it is filled up?—No; after that.

4603. The Crown officers therefore know the witnesses for the defence?—Yes.

4604. Does the prisoner's counsel know the witnesses who are to be called against him?—No.

4605. How long does the summons precede the trial?—Generally speaking, I should say on the Friday they receive the summons for the Saturday, that is the day after. They may receive a summons any day during the week; but, in practice, it is received about Friday.

4606. The case being tried on Saturday?—Yes.

4607. The remedy of detaining witnesses about to leave the Island is confined to cases au Grand Criminel, is not it?—Yes: there is no remedy, au Petit Criminel, except that you may apply to take down the evidence of any person leaving the Island provisoirement.

4608. What is the form of taking the evidence provisoirement?—The witness is called before the Cour du Quartier; he is put upon oath, and then makes his statement.

4609. Is that in the presence of the prisoner's counsel?—Yes.

4610. If evidence for the prosecution is taken provisoirement, is that in the presence of the prisoner or his counsel?—Yes, in cases au Petit Criminel.

4611. The *Procureur.* That is in procès ordinaire: there is no difference between a procès ordinaire and au Petit Criminel.

4612. (To Mr. *Falla.*) The witnesses being called, are they examined and cross-examined?—Yes; the witnesses for the Crown are called first.

4613. Have you been present at any English trials?—Yes.

4614. Are the witnesses examined much in the way that they are in an English Court vivâ voce?—Yes.

4615. We do not usually begin by desiring the witness to tell his story: but we examine him by questions; we ask him "Where do you live?" and so on?—We do not do so much in Guernsey, because everybody knows everybody.

4616. Do you draw out the story of the witness by questions?—The practice in Guernsey, up to the last two or three years, has been to call the witness to the bar, and tell him to declare what he knows of the transaction. That is still the practice of some of the lawyers.

4617. Are the Commissioners to understand that your practice has been modified lately?—I have remarked that it has been to a certain extent.

4618. Since Mr. Carey has been Bailiff, should you say?—Yes. I have remarked that the Contrôle has introduced a practice in the case of a witness called by him, of questioning him upon all the facts.

4619. Is the objection to suggesting an answer by the form of the question, or to what we call a leading question, very strongly enforced?—I should say yes.

4620. (To the *Bailiff.*) Do you agree to that?—Not always. The cases, in which it appears to me that the rule has been erred against, have been chiefly where a witness has been asked, "Did not you say so and so."

4621. In the examination in chief?—Yes; in asking "Was not so and so said;" suggesting to the witness the nature of the conversation, instead of asking him what was said. I think it is in that class of cases I have observed it chiefly.

4622. Practically, do you find it to be an inconvenience that a witness should give a statement, instead of being questioned as to the material facts which are to be elicited?—I would distinguish. I find it very inconvenient, myself, that he should begin by giving a statement before I know who he is, what he is, how he got upon the place, and what is the point of view from which he starts. It frequently happened, when I first came, that a man, of whom I knew nothing, began telling a story. He went off in medias res; and I did not know what he was about, and was unable to follow him, till I ascertained the point from which he started. I think it is very convenient, when you have once got a man into a right course, to set him going by desiring him to tell his story.

4623. Should you say that this mode of examining a witness arises, in some measure, from there being no deposition furnished to the gentlemen who have to examine him?—I think very much so, there being no deposition furnished either to the examining counsel or to the Court.

4624. Does not that almost necessitate this mode of examination?—Yes; I think it does. In point of fact, not only is there no brief, but the advocate does not know, accurately, what it is that his witnesses are going to say. A great many witnesses do not state at all beforehand what they are going to say, which makes it necessary, very much, to adopt that kind of examination. That fact accounts a great deal for the form which the examination takes in this Court.

4625. Do you know what is the object of preserving no record of the evidence taken before the committing Court?—If you ask me the object, I suppose it is that, being a secret court, nothing is to be made known that passes there. As to the utility, that is quite another question. I know of no improvement which would be so great here, as that of taking down in writing all the evidence upon which a man is committed, and letting the counsel for the prisoner have copies of it a certain time before the trial. I believe that would secure two advantages: I think it would give the prisoner pretty nearly the same advantages as if he were present, while it would reserve to the Court all the power which it derives from a secret examination.

4626. What are the particular powers which the Court derives from secret examination?—The great point, with regard to secret examination, appears to me to be with respect to the interrogatory of the prisoner. There are other advantages which we can see: but the one which strikes my mind most strongly, and the only one which seems to be of any very great weight, is with reference to the interrogatory.

4627. The prisoner has the chance of evading that, has not he, if he is well advised?—The prisoner may decline stating anything, and sometimes does: but, sometimes, he states facts which are very material to the defence.

4628. May not he sometimes, being an ignorant man, make the blunder which we see ignorant men sometimes do, though innocent, tell an untruth to get rid of evidence which is suggested to his mind by the question put?—There is less danger of that when he has not heard the evidence than if he had heard the evidence.

4629. Is there no danger that the prisoner, who has minute questions put to him, may have recourse to a sudden falsehood for the purpose of getting rid of what he supposes to be a dangerous inference?—There is danger of it. I have no doubt it is done, from this fact, that, where two persons, charged with an offence committed by them jointly, have been severally interrogated, their statements have been different and inconsistent. One of those must have stated some facts which were untrue.

4630. Does not he thereby prejudice his own case unfairly? A person of good education knows that the best thing he can do is to tell the truth; but the class of men who are the subjects of criminal prosecutions may not always have been taught that.—I do not think, in practice, his giving a statement, which is at variance with the facts proved, tells so strongly against him, as I have heard the same circumstances do, when a man has made a voluntary statement in England on a trial, or when any statement he has made in the nature of a confession is given in evidence. That is more strongly relied upon in England, I think, than here.

4631. Is there no risk of the system embarking those who are questioning him in a sort of contest with the prisoner?—I am not conscious of any thing of the kind taking place.

4632. Mr. *Andros.* The Procureur always cautions a prisoner that the statement he may make will be used against him upon the trial.

4633. (To the *Bailiff.*) Do you prefer the present system to the prisoner knowing all that has been said against him, and then telling him he may say what he pleases?—I do, as a preliminary inquiry.

4634. Mr. *Carré.* I believe that the Commissioners witnessed an examination of that sort the other day: and, I think I may say that that was as close an examination of a prisoner as takes place in any case.

4635. The *Bailiff.* If there were any facts likely to be evidence, either of guilt or inno-

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cence, that would be inquired into; but the inquiry would be confined to the facts. I apprehend that the purpose of the interrogatory is solely to inquire into the facts, and, if you can, having got the scene, to carry him, the actor, through the whole scene, to see whether he acted the part which has been attributed to him, or whether he represents any other line of conduct. I have heard small points stated by a man on his defence, which certainly were very material.

4636. And true?—Yes.

4637. Have you never known an untruth stated which injured the man himself?—I think I have. I have not at this moment a particular recollection: but I think I must have known such cases.

4638. Mr. *Carré.* I should say that, when a prisoner departed very much from the truth pon his interrogatory, it would rather turn against him at the time of his trial; whereas, in cases of doubt, where a prisoner appears to have adhered closely to the truth, his statement is received with a good deal of reliance and goes in his favour. I have frequently known prisoners acquitted, who have not adhered to the truth, because the evidence was not sufficient to convict them, though it was evident, from their interrogatory, that they endeavoured to conceal the truth.

4638. The *Bailiff.* I may allude to one case which occurred not long ago, in which three persons were charged with the same offence. There was considerable circumstantial evidence, but no identification of the parties. Each of the three gave a different story. The man against whom the evidence was strongest was tried first, and was acquitted, though, I think, there was enough before the Court to show that the statement which was given was not a straight forward statement of the facts.

4639. Mr. *Andros.* I have thought, if it were possible to have the advantage of the interrogatory, and yet confront the prisoner with the witness before he is committed, it would be a benefit. I mean, that the prisoner's interrogatory might be taken after the witness against him has been heard and the charge has been put into form. The prisoner might, then, be examined, and the witness called in again, so as to give an opportunity of confrontation before the committal of the prisoner.

4640. Mr. *Falla.* I wish to make an observation upon what we call l'interrogatoire. I must admit that it is a very essential part of our proceeding to convict all guilty persons; but my opinion is that, in doing so, you run the risk of finding guilty a person who is not; and, from the experience I have had at the bar, and I think I have pleaded for one half of the prisoners since I have been at the bar, whether I pleaded for guilty prisoners or innocent ones, l'interrogatoire has always given me more trouble than any thing else. I have seen prisoners, acquitted, in great danger of being found guilty by what they have stated in the interrogatoire; and I have very often heard the Crown lawyers, as well as members of the Court, bring forward things stated in the interrogatoire to ground an opinion of guilt upon. Where I have seen the greatest hardship to prisoners is, where there are two, three, four or five prisoners accused of the same crime.

4641. Are such prisoners in practice, tried together or one by one?—One after the other.

4642. The *Bailiff.* The evidence is sometimes taken together.

4643. Mr. *Falla.* When the prisoners agree to it. By our practice, they are not tried together; but, sometimes, when the prisoners agree to the witnesses being examined together upon all the cases on the part of the Crown, it is done, but not for the defence. When four or five prisoners are called in private into Court, one after the other, and questions are put to them, the first impression upon their mind is that the Crown lawyers in the Court wish to make them declare different things; and an ignorant person or a timid person, with that thought, is not capable, in my opinion, of giving a faithful statement; and, if he does not, it is sure to turn against him. If those several prisoners do not give the same statement, as to certain facts, the members of the Cour Ordinaire, which commits them for trial, sitting in judgment upon them when they are tried, remember perfectly well what the different prisoners have stated; and, though the interrogatoire is only read against the prisoner, who is taking his trial, the three or four magistrates who have been present when the prisoner has been committed, knowing what the other prisoners have stated, would be at a loss to know which has declared the truth.

4644. The particular difficulty you are just now adverting to would be got rid of by insisting upon the two tribunals consisting of different members?—That is my opinion.

4645. You said, just now, that you had heard the Crown lawyers, as well as the members of the Court, bring forward things stated in the interrogatoire as the foundation of their opinion upon the case. Was that in cases where you were sufficiently in possession of the facts to know that the statement in the interrogatoire was untrue?—That I cannot say, though I can state that I have seen prisoners give an incorrect answer in cases when they were not aware that it was incorrect.

4646. Suppose the interrogatoire to remain: is not it an objection that those, who have to decide ultimately upon the value of it, have not seen the manner in which it is given?—Certainly.

4647. On the other hand, if they were present, would you not get into the difficulty which was stated before of impressions remaining upon their minds?—Yes. I would do away entirely with the interrogatoire, because I do not think a person accused of a crime is in a fit state to be questioned by the Court. You must be aware of the manner in which they are taken up; they are not advised; they are put into a cell, and not allowed to see a counsel.

4648. If you were chosen counsel before the interrogatoire, and saw the prisoner, what advice should you give him as to answering?—I should tell a prisoner, whether he was guilty or not, to decline answering. I should tell him, from the experience I have had, to decline answering.

4649. You said, just now, that one strong objection you had to the interrogatoire was, that the prisoner, by giving false statements, might be involved in the falsehoods he had told:

would not that danger be increased by the fact that no person would be accused of any crime without strong circumstances of suspicion, whether true or false against him?—Certainly.

4650. The particular danger which you pointed out is the more liable to be brought on because there is always something to get rid of?—Yes: and I have seen a prisoner give an answer to a question, very insignificant in itself, directly contrary to truth; and, on other questions being put to him, that falsehood would lead him where he was not aware.

4651. Perhaps, as this is a practice which differs very much from our own mode of proceeding in England, the gentlemen acting as Judges here will say whether they adhere to what the Bailiff states, as to the benefit to be derived from the interrogatoire?

4652. Mr. *Carré.* I think it is found, in practice, exceedingly useful to throw light upon the evidence previously taken by the Court.

4653. And, in practice, not attended with the evil consequences which Mr. Falla attaches to it?—As far as we can ourselves judge, I should think not. The counsel for the prisoner, of course, views the interrogatoire in the light, I will not say of a partizan, but of a person desirous of saving his client. In almost every case, I think, it is of immense advantage to the elucidation of truth. The question then would be, whether in any particular case that has led to a wrong opinion. I am not aware that such a thing has occurred.

4654. Mr. *Andros.* I quite agree with what has been stated.

4655. (To Mr. *Le Retilley.*) Do you also agree with it?—I do. I think it is most important to preserve the interrogatoire for the administration of justice. I think no evil whatever can be traced to the interrogatoire. I think, on the contrary, it has tended to the discovery of many crimes which would never otherwise have been discovered. On the other hand, I think, it may be safely asserted that not one innocent person has been convicted, in consequence of having declared falsely in his ignorance.

4656. (To *Colonel De Havilland.*) Do you agree in that opinion?—I do. There may be some cases, perhaps, in which the members of the Court, when they come to try B., may recollect what A. has declared, and which, though relating to the same charge, is not admissible according to rule. But I agree with those gentlemen that the interrogatoire is generally useful. I have not been very long on the bench: but I do not think any man has suffered from his interrogatoire or his saying any thing falsely upon it.

4657. (To Mr. *MacCulloch,* Jurat.) Are you also of the same opinion?—I am.

4658. Mr. *Falla.* I can safely say I do not know one single instance where a prisoner has suffered because there has been an interrogatoire: but I have seen several cases where a prisoner has been in danger of being found guilty because he had been questioned before the Court, and his interrogatoire was brought forward upon the trial. When I speak of the danger of being found guilty (if he was acquitted I take for granted he was innocent), I mean, when, perhaps, out of ten magistrates there were four to convict him, and I may say even five out of ten to convict him, the Bailiff giving his casting vote in his favour. I say, in that case, I have never seen an instance where a prisoner has been found guilty while innocent; but, at the same time, I believe the interrogatoire is a most dangerous thing for an innocent person accused of a crime. I repeat, I perfectly agree with all these gentlemen in this. It is a very useful part of our proceedings to convict a guilty person, and to make sure of the conviction of all guilty persons brought before the Court; but from the interrogatoire an innocent person is in very great danger. To show that the interrogatoire is only brought forward to convict or show the guilt of the person accused, you may say that, in nine tenths of the cases brought before the Court, when the interrogatoire is cited by the Crown lawyers, it is to show that the prisoner is guilty, and not to show his innocence. I could go further than nine tenths. I remember very few cases where the Crown lawyers have brought forward the interrogatoire to prove that a person is innocent. It is invariably brought against him. I must also state that, in our present mode of proceeding in criminal cases, the interrogatoire is very useful to the counsel for the defence; because an advocate, after having pleaded for a few years before this Court, can guess pretty well what facts are to be brought against the prisoner, by the questions put to the prisoner; and that I may say is the only guide which in many cases I have had for the defence of a prisoner. I am not mentioning that fact, of course, to show that the interrogatoire is useful, because my opinion is that there ought to be something to enable the counsel to make his defence, especially as he has to plead before the Crown lawyers. To shew that the prisoner is very often not aware what he declares to the Court, upon reading to him his interrogatoire, I have very often heard a prisoner state, "I am not aware that I have declared so and so." I bring forward that fact to shew that the prisoner is not in a proper state of mind when brought before the Court to answer the questions put to him. I also object to the interrogatoire, because it brings the Court and the prisoner more or less in contact, especially in our way of proceeding, in which the Court, in constituting a prisoner, sits upon him in judgment. First, the prisoner has no confidence in the men before whom he appears, because he fancies that they wish to catch him or to detect him in an untruth; and if he does not declare openly and truly to the questions put to him by the Court, the Jurats have no confidence in what the prisoner declares; that is if he hesitates in any way, though he may declare the truth. If I am allowed to express an opinion, as to whether the Jurats who, as we say, constitute a prisoner, should sit upon him in judgment, I should say not; because they may hear evidence in the absence of the prisoner or his counsel, which evidence may not be brought before the Court; still they can bear in mind what they know, having heard that evidence in the Court below. The same witnesses may appear at the trial who have been present when the prisoner has been committed; they may declare part of the facts on the trial that they had declared before the Cour du Quartier, and only a part of those facts: but still, the same witnesses appearing before the same men, those men may go further, without being aware of it, than the evidence brought on the day of the trial would justify. I have only to add, upon this subject, that I came to the bar with the opinion which

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I now express; and, from the experience I have had, I am the more confirmed in that opinion.

4659. Mr. *MacCulloch*, (Advocate). There is a remark I should wish to make. Without at this moment expressing an opinion upon the interrogatoire, I would merely state that I have known instances in which the interrogatoire has proved exceedingly useful to an innocent person, for example, in cases in which there was some doubt with respect to the weight of evidence on both sides, and in which the prisoner has been enabled to substantiate the truth of circumstances, in themselves immaterial, stated by him, at the time of his interrogatoire; the corroboration of certain circumstances seems to be taken as giving a sort of confirmation to the whole of his statement, showing him to have declared with good faith and that would of course weigh in his favour.

4660. (To Mr. *Falla*.) Suppose a prisoner were to hear the evidence against him, and then be told, now state what you please; would not that leave it open, if he chose, to tell his story then, to show a fair intention at that time, which he might afterwards corroborate by showing that his story was true?—Certainly it would.

4661. Mr. *Carré*. With regard to the question whether a prisoner might not be interrogated, after having heard the evidence against him, I should say it would take away altogether from the weight in his favour, which now, frequently, attaches to his being interrogated.

4662. Mr. *MacCulloch*. I should think so too.

4663. The *Bailiff*. I should think the interrogatory tells much more in favour of a prisoner than any story which he tells in England tells in his favour.

4664. The *Procureur*. I should wish to make a few observations upon the interrogatoire. The view I have of it is this, that the interrogatoire is a most important feature in our criminal proceedings, and it often is of the greatest use to a prisoner for the reasons which have been mentioned by other gentlemen. I think it right to add that I have now been at the bar forty years, and that, before I was Crown lawyer, I acted and pleaded for full one half of the prisoners, probably more, and that, during that time, I never knew an innocent person condemned in consequence of his interrogatoire. Indeed I may say I never knew one innocent person condemned. It appears to me that the great difficulty in the interrogatoire is this, how far it ought to be carried. That appears to me to be an important question.

4665. (To Mr. *Jeremie*.) Do you wish to state any thing upon this point?—The interrogatoire, I think, is a very proper instrument to find out the truth, whether to convict or to obtain a fair acquittal. In the first place, I will say that the great objection to it is this: the idea runs in most of our heads of a compulsory act on the part of the prisoner. If indeed it were similar to the interrogatories of which we form a notion when we think of interrogatories in the Inquisition and other tribunals of the kind, where you compelled a man to speak, it would be very different: but here, on the contrary, it is a free act upon his part, and a most material document for the acquittal or otherwise of the prisoner. I should say, when a prisoner is brought up, the Procureur, in particular, puts in the interrogatoire; and, if it is conformable to truth, conformable to the evidence, and conformable to a fair and reasonable deduction which may be taken from all that he has seen, he gives from that document a fair statement; and he is in point of fact the lawyer of the prisoner. But to say generally that the Crown officers are the lawyers of the prisoner, as one of my learned brothers has declared, I cannot, particularly when fines are in question. I think, they then prosecute with as much vigour as they do to obtain a verdict in any civil case: but, when it is a mere question of punishment, of corporal punishment for instance, I will say this: that the Queen's Procureur, particularly, weighs well both for and against, and, if the lawyer has forgotten any thing, as it sometimes happens to myself among others, he will bring up what has been lost sight of. I always form my opinion from what the prisoner says in his interrogatory. He cooks up a story sometimes when you go to him, when he has been in prison some time; and it is the interrogatoire which brings him to his senses. You declared so and so: do you persist in that? If he does, then you know how to act. I should say that the interrogatoire is of the greatest service to the counsel. It is upon that he knows what witnesses to bring; it is upon that he says to the prisoner you may bring so and so. It is irrelevant; but you can form your opinion upon it; and, besides that, it is of the greatest benefit when four or five prisoners are brought up and accused, and there is one rogue among the five; you can then find him out better by seeing which of them has most come within the verge of truth. If it had been found in any way the means of convicting an innocent person, or prejudicing innocence, then it would come back very closely to the system of the ancient Inquisition, where it was a forced and compulsory, not a free, instrument; and, in that case, I should say abolish it. Mr. Falla has stated that the Judge, who takes the interrogatoire and who commits the prisoner, ought not to be the Judge who condemns him or who tries him rather. If experience showed that from the committal or from the taking the interrogatoir any very erroneous impressions were created, or any acts were done to the prejudice of innocent persons, or of persons in whose favour there was a strong presumption of innocence, I should say, again, abolish it; but the practice is invariably to the contrary. I do not think the Judge, from having been on the preliminary proceeding, is biassed when he comes to give his opinion. There are some men who at a glance can find out the truth, and pursue it in all its ramifications; but those are very few individuals, I think. It is my opinion that, being well instructed and knowing what has passed, if they come forward with conscientious motives, it is a good thing that they should have seen all that has gone before: therefore, I think, from the experience which they have had of the case, their having had a certain knowledge of the past makes them better able to take a view of the whole. I know of no case where the Crown officers have insisted solely upon the interrogatoire, or where the Court has judged upon that to bring home a conviction. At the same time, I should say this, that, if an individual comes forward and makes a free confession, I think it ought to be taken. Here, I think, no body will ever say that a prisoner has been compelled to plead Guilty. At the same time, I must

give my candid opinion that, if a man comes fairly and says "I am Guilty," I do not think it is the Judge's place to tell him, mind what you are about: but I think, such a confession ought to be immediately recorded and acted on.

4666. We understand you to consider the interrogatoire beneficial, not simply as assisting to find out guilt, but as also assisting to find out innocence. Why then should it not be compulsory?—For this reason, because, if it were compulsory, it would lose the effect of the instrumentality in finding out the guilt or proving the innocence. If you were to compel it, then you would lose the voluntary act. It is the voluntary act which, in my opinion, makes it valuable for finding out the truth.

4667. Supposing the compulsion merely went to this: if you do not answer the questions we will take that as a confession of guilt?—I should look upon that as a compulsion.

4668. If the answers given necessarily assist the discovery of the truth, whether he is guilty or innocent, how would the effect of his being bound to give those answers destroy their instrumentality?—I do not think it should be compulsory; because, if it is, his mind would not be unbiassed, and he would have to resort to those shifts which might put away the appearance of truth, whereas, being of his own free will, there is not that danger. Besides that, if it were an act of compulsion, the Queen's Procureur could no longer come and say, here is an act which brings out the truth in a fair manner: the good effect of the interrogatory would therefore be lost.

4669. Would not the Procureur then say, here is a man, who, being compelled to answer, has told a story which turns out to be true, and would not that tell strongly in his favour?—No; the freedom of the act which gives it its value would be lost.

4670. The *Procureur*. Here is a Dictionary of the Law of Scotland by Mr. William Bell. Under the head of "Criminal Prosecution", page 327, the first volume of the edition of 1826, he says, "In the case where the party is brought before a magistrate for examination, it is the duty of the magistrate, first, to see that the prisoner is in a fit state to undergo an examination; second, that he is warned of the use which may be made of what he says; and third, that the declaration is taken down in writing." He says afterwards, "Unless the magistrate see reason immediately to release the prisoner, his next step is to commence an inquiry or precognition, as it is termed, concerning the grounds of suspicion, in which he will take the declarations of such persons as have cause of knowledge of the offence and the prisoner's participation in it." Neither the accused nor his friends are entitled to be present at the precognition. It goes on to say, the precognition being concluded, the facts being such as to warrant committal, the accused is then committed for trial. Perhaps I might say that I am very much of opinion that the Court which commits might advantageously be different from that which tries.

4671. (To the *Procureur*.) Do you recollect in the case of the murder of the Danish boy, whether you were not excluded from some evidence by the list of witnesses being full?—I think we had all the important witnesses. There were one or two who came from England; but, as far as my memory serves me, their evidence did not appear to be very important.

4672. Can you furnish the Commissioners with any documents showing what those witnesses were to prove?—No: the impression upon my mind is that we selected the best witnesses, and that there were one or two not examined: but, if my impression be correct, they were not very essential.

4673. The question to be ascertained is whether your list was full, so that, however important those witnesses might have been, they could not have been examined?—I cannot say exactly how the facts were; I will endeavour to ascertain. I can cite one case, where many more than twelve witnesses were necessary. A person was tried some time ago who had committed nearly thirty burglaries, a man of the name of Churchill. The man was tried; and, of course, we could have only more than twelve witnesses.

4674. Was he tried for the thirty crimes at once?—Yes; they were all mentioned in the indictment. An accomplice turned King's evidence: but he was acquitted.

4675. You found your case embarrassed by the limitation?—Yes.

4676. The *Bailiff*. The embarrassment being to this effect, that only certain counts of the indictment could be proved. The Acte of accusation contains not the same thing differently described, but different offences.

4677. Do you use the word "Count?"—No; chefs d'accusation.

4678. The *Procureur*. Though we had eleven witnesses besides the accomplice, we felt that the proof might not be sufficiently strong, even on those counts to which some of those eleven witnesses spoke. The accomplice was admitted Queen's evidence in order to ensure a conviction.

4679. The *Bailiff*. Probably one or two cases would have been proved without an accomplice.

4680. The *Procureur*. Yes.

4681. (To the *Procureur*.) Why could not you have instituted ten separate prosecutions in the case of ten offences?—It is not usual.

4682. Supposing a man murdered a man in March and committed a burglary in June, would they be tried together?—If the one case was for murder, and the other for a small misdemeanour, I think the case for murder would be alone; but, if there are several accusations for theft, for instance, it has always been usual to put them together.

4683. At any distance of time? Supposing there was an interval of six months?—Certainly.

4684. Is there any law to that effect?—Only custom.

4685. The *Bailiff*. I very much suspect, from the practice, that formerly autrefois attaint cleared everything down to the actual attainder.

4686. (To the *Bailiff*.) Do you see any reason for keeping up such a practice as the present one?—I do not.

4687. (To the *Procureur*.) In the case of the Danish boy, what became of the prosecution?—The prisoner was acquitted.

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4688. Mr. *Andros.* The Court was not satisfied that the violence used by the master caused the death of the boy.

4689. The *Procureur.* With respect to the witnesses, it has been said that notes might be taken of the evidence of the witnesses in the first instance, and given to the counsel. Suppose witnesses to be discovered afterwards: are the public prosecutors to be debarred from having those witnesses? The practice I should recommend would be that, when witnesses are ordered and the prisoner has chosen his counsel, the next summons should be sent a week before the day of trial, and that, at the back of the summons, the names of the witnesses against him should be inserted. Except you have the means of bringing the witnesses before the Court in the first instance and having them examined, it is impossible to know what they can say, because nineteen out of twenty witnesses would refuse to speak till they came to Court: and, indeed, many in this Island think it would not be right for them to tell what they know till they come to Court: so that, if you wish to have an opportunity of letting the counsel for the prisoner know what the witnesses say, you must, if you discover other witnesses, again bring them before the Court, take their evidence, and send notice of what they say to the counsel for the prisoner.

4690. The *Bailiff.* I have to hand in to the Commissioners certain Ordinances.

4691. Are those Ordinances which did not pass through the States?—I believe so. The first, of the date of the 27th of April, 1840, relates to the Militia. The next is concerning Taxes and Settlements, of the 30th of April, 1821. Also the Ordinances relating to the Harbour, of the 19th of January, 1846, in which I give the Commissioners the parts of the Ordinance as altered. There is another Ordinance about rents, 20th of January, 1840. With respect to the right of the Lieutenant Governor to be present in Court, here is a copy of the proceedings which took place when that claim was made. (*Producing them.*)

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Le 20 Novembre, 1845, devant Pierre Stafford Carey, Ec$^{r}$. Baillif. Présens Jean Le Marchant, H. O. Carré, Harry Dobré, et Thomas Andros, Ecuyers, Jurés.

Son Excellence le Lieutenant Gouverneur aussi présent.

La Cour ayant voulu procéder dans le particulier à l'information contre femme Bisson, produite ce jour devant la Cour par le ministère de Mons$^{r}$. J$^{no}$. Gardner, un des assistants de connétable de la ville et paroisse de S$^{t}$. Pierre Port, accusée d'avoir, le treizième Novembre, 1845, devant la Cour dans la plainte amenée contre Arthur Donelly et autres, soldats dans la Compagnie de Capitaine Cole dans le 27$^{e}$ Regiment en garnison en cette Isle, comme parait plus amplement dans acte de la Cour du dit jour, à quoi recours, et dans laquelle dite plainte la dite Bisson fut entendue comme témoin de la Couronne, commis le crime de parjure, et Mons$^{r}$. le Lieutenant Gouverneur s'étant présenté et clamant le droit d'être présent avec la Cour dans le particulier pendant la dite information, et ayant refusé de se retirer lorsque respectueusement requis de ce faire par Monsieur le Baillif, et ce, vu qu'il clame comme Lieutenant Gouverneur le droit d'être présent à toute séance judiciaire de la Cour sans préjudice à son droit d'être present à toute autre séance de la Cour; La Cour, ouies les conclusions des officiers de la Reine, a remis à la Cour en corps la considération de l'incident qui s'est ainsi élevé.

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Le 20 Novembre, 1845, devant Monsieur le Bailiff. Présens Jean Le Marchant, Ec$^{r}$., Messire W$^{m}$. Collings, H. O. Carré, F. Mansel, T. W. Gosselin, T. Le Retilley, Harry Dobrée, T. F. De Havilland, Thomas Andros, Edgar MacCulloch, et W. P. Metivier, Ecuyers, Jurés.

Son Excellence Mons. le Lieutenant Gouverneur aussi présent.

Monsieur le Baillif ayant communiqué à la Cour, extraordinairement assemblée à ces fins, un Acte en date de ce jour et an et dont la teneur suit:

(Vide l'acte ci-dessus.)

Et Monsieur le Lieutenant Gouverneur, à ce présent, ayant persisté dans sa dite réclamation: la Cour, ouies les conclusions des officiers de la Reine, a décidé que la considération du dit incident aura lieu publiquement et a remis à demain matin, dix heures, pour entendre les conclusions des officiers de la Reine à ce sujet.

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Le 21 Novembre, 1845, devant Pierre Stafford Carey, Ec$^{r}$., Baillif. Présens Jean Le Marchant, Ec$^{r}$., Messire W$^{m}$. Collings, H. O. Carré, F. Mansell, T. W. Gosselin, T. Le Retilley, Harry Dobrée, T. F. De Havilland, T. Andros, Edgar MacCulloch, et W. P. Metivier, Ecuyers, Jurés.

Son Excellence Mons. le Lieutenant Gouverneur aussi présent.

La Cour aujourd'hui extraordinairement assemblée, aux fins d'Acte du 20 courant, pour prendre en considération la réclamation faite le dit jour par Mons$^{r}$. le Lieutenant Gouverneur soutenant qu'il a droit d'être présent à toutes séances judiciaires de la Cour, sans préjudice à son droit d'être présent à toutes autres séances de la Cour: après que la Cour par son dit Acte a remis à ce jour pour considérer publiquement la dite réclamation et pour entendre les conclusions des officiers de la Reine à ce sujet: sur la question proposée aux dits officiers de la Reine, si Mons$^{r}$ le Lieu$^{t}$. Gouverneur a droit d'être présent aux séances judiciaires dans le particulier de la Cour, telles que les informations et enquêtes criminelles, la Cour, ouies les conclusions des officiers de la Reine, a été d'avis et déclare que Mons$^{r}$. le Lieutenant Gouverneur n'a aucun droit d'être présent au séances judiciaires dans le particulier de la Cour, telle réclamation n'étant fondée en droit, et étant contraire aux lois et coûtumes établies en cette Ile, et ce d'opinion uniforme, et renvoye à la Cour ordinaire pour procéder incontinent à la dite enquête.

4692. What is the date of that?—The 20th and 21st of November 1845. The authority upon which the claim was founded was the following passage in Warburton's Treatise on the History, Laws and Customs of the Island of Guernsey, page 35. "The Governor, or his Lieutenant for the time being, may be present at all times when the Court sits, and has authority to command and advise the Bailiff and Jurats to observe the laws in the administration of

justice, without any unnecessary delay thereof." A Commission, of the 11th of March, in the 6th of Queen Elizabeth, has been found using language from which Warburton appears to have derived what he says. Either this Commission of Elizabeth was his authority, or none can be found; and the main body of that Commission was to be in force for three years only. Of course, it would be a question, whether the particular clause related to this matter, and whether it was temporary only: but that was the shape in which the question came before the Court.

4693. What is the date of the Commission to which you refer?—In 1563. It is in the first Book in the Greffe.

The Commission is under the Great Seal, dated at our Castle of Hertford, the xi daye of Marche, in the sixte yeare of our raigne, and is addressed to Francis Chamberlayn Escuyer, Capitaine and Governor of our Isles of Guernsey, Alderney, Sarke, Erme, and Gettawe, Hellier De Carteret, Esq. Lieutenant to the said Francis in the said Isles, Thomas Compton, Esquire, Bailiff of our said Isle of Guernsey, John After, Dean of the same Isle, Ottis Nicholle, Bailiff of our said Isle of Jersey, Nicholas Collemine, Jurat, and Nicholas Careye Junior, Gentleman, Receiver of our Revenues in our said Isle of Guernsey. The passage referred to is as follows.

We also, having an especial care that justice be dewely ministered within our said Isles, and that our subjects, in the same Isles, be by no means abused therein, contrary to good laws, equitie and conscience, have ordeyned, and by these p̃nts do ordeyne, that the Captayne and Gouvernor or his Lyeutenant, for the tyme beinge, in our sayd Isle of Guernsey, shall be present at all Courts kepte or holden within our said Isle; unto whom we give auctoritie to advise, wyll, and, in our name, require and commande our Bailiff and Jurats, with the Prevost Procureur and Controller, and all other officers, that they and any of them, in their several vocations, have especiall regard that ancient written Politic Laws and approuved customs of our said Isles be in no wise neglected or abused, so as, thereby, our ancyent rights and deutyes, with such also as be newly accrued and reserved unto us, or any our officers or ministers there, may be redely answered, and in that part do yelde like expedition to all our good and loving subjects there without protractinge of time by process.

The following forms of Registering Orders in Council and Acts of Parliament were handed in by the Greffier.

A la Cour Royale de l'Isle de Guernsey.

Le vingt trois Avril, mil huit-cent trente-huit, devant Daniel de Lisle Brock, Ecuyer, Bailiff, présens Jean Guille, James Carey, Jean Le Messurier, Jean Hubert, Jean Le Marchant, Hilary Olivier Carré, Frederic Mansell, Pierre Bonamy Dobrée, Thomas William Gosselin, et Thomas Le Retilley, Ecuyers, Jurés.

Monsieur le Baillif a, ce jour, présenté à la Cour un Ordre de Sa Majesty en Conseil, en date du 15e Fevrier, 1838, qui lui a été transmis par son Excellence, Monsieur le Lieutenant Gouverneur et aquel la tenure suit.

At the Court of Buckingham Palace, the 15th of February, 1838.

Present,

The Queen's Most Excellent Majesty,

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|---|---|
| Lord Chancellor, | Earl of Minto, |
| Lord President, | Viscount Palmerston, |
| Lord Steward, | Viscount Melbourne, |
| Lord Chamberlain, | Viscount Howick, |
| Earl of Albemarle, | Sir John Hobhouse, Bart. |

It is this day ordered by Her Majesty, by and with the advice of her Privy Council, that a printed copy of the Act 5th and 6th William IV., cap. 62, be transmitted to the royal Court of the island of Guernsey, viz.:—

An Act to repeal an Act of the present Session of Parliament, intituled *An Act for the more effectual abolition of the Oaths and Affirmations taken and made in various Departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of Voluntary and Extra Judicial Oaths and Affidavits;* and to make other Provisions for the abolition of unnecessary Oaths. And it is hereby further ordered, that the said Act be registered and published in the Island of Guernsey, not as being essential to its operation therein, but that her Majesty's subjects in the said Island may have notice of the said Act having passed and that they are bound thereby. And the Governor, Lieutenant Governor, or Commander in Chief, for the time being, of the Island of Guernsey and its Dependencies, and all other persons whom it may concern, are to take notice of Her Majesty's pleasure hereby signified, and govern themselves accordingly.

(Signed) C. Greville.

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La Cour, en ordonnant l'enregistrement du susdit Ordre et de l'Acte de parlement du 9e Septembre, 1835, qui l'accompagne, a cru devoir insérer, en même tems, sur les Records les observations suivantes.

La Cour a toujours reconnu, et reconnait encore, que toutes les clauses d'un Acte de Parlement, où les Isles sont dénominées, sont en force dans les dites Iles, lorsqu'accompagnées d'un Ordre de Sa Majesté en Conseil et enregistrées sur nos Records.

En 1806, à la suite de quelque remontrance très humblement addressée a Sa Majesté en Conseil pour donner raison du retard que la Cour avait mis à l'enregistrement d'un Acte de Parlement, le Très Honourable Conseil insera, pour la première fois, la clause suivante dans les Ordres donnés à la Cour d'enregistrer les Actes de Parlement, que ces Ordres accompagnaient. "And it is hereby further ordered that the said Act be registered and published in the Island of Guernsey, not as being essential to its operation therein, but that Her Majesty's subjects in the said Island may have notice of the said Act having passed, and that they are bound thereby."

Cette clause s'est toujours depuis introduite dans les Ordres qui ont accompagné les Actes de parlement; et l'enregistrement des uns et des autres n'a pour cela, souffert aucune difficulté, parceque, dans les Actes de parlement ainsi transmis, l'Isle de Guernsey se trouvait distinctement denominée. Au contraire, le nom de cette Ile ou de ces Iles ne se trouve nulle part dans l'Acte de Parlement du

GUERNSEY.

Thomas John Blondel Falla, Esq.

September 30th, 1846.

9e Septembre, 1835, quoiqu'il nous soit transmis le 15e Fevrier, 1838, par un Ordre en Conseil qui contient la clause précitée.

Enregistrer l'Acte en question dans lequel l'Ile n'est pas dénominée, enregistrer la clause qui déclare, malgré cela, que, pour le mettre en force, il suffit de donner connaissance aux habitants, qu'ils sont liés par les dispositions du dit Acte, et enregistrer le tout sans réserve, ce serait dire que tous les Actes de Parlement, sans exception, pourraient être transmis et avoir force dans l'Ile, soit qu'elle fût ou qu'elle ne fût pas nommée dans les dits Actes, et soit qui les dits Actes fussent ou ne fussent pas enregistrés sur nos records. Ce serait mettre de côté ce principe de la loi Anglaise, qui n'a jamais été contesté, que nul Acte de Parlement n'est en force dans les Iles, à moins qu'elles n'y soient particulièrement denominées.

N'ayant rien à objecter aux dispositions des Actes de Parlement en question, et les laissant dans toute leur force, c'est pour prévenir le préjugé d'un enregistrement, sous de pareilles circonstances, que la Cour a cru devoir insérer à sa suite les observations présentes, qui sont de nature à réserver à la Cour la faculté d'adresser, avec plus d'effet, ses très humbles remontrances à Sa Majesté en Conseil si jamais par inadvertence le même cas arrivait.

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4694. Le 9e Septembre, 1837, devant Monsieur le Baillif, présens, &c.

Monsieur le Baillif ayant ce jour présenté à la Cour un Ordre de Sa Majesté en Conseil en date du 26 Juillet, 1837, qui lui a été transmis par Son Excellence le Lieut. Gouverneur, la Cour, après en avoir entendu lecture, a ordonné que le dit ordre sera enregistré.

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4695. Le 16 Décembre, 1837, devant Monsieur le Baillif, présens, &c.

Monsieur le Baillif, ayant ce jour présenté à la Cour un ordre de Sa Majesté en Conseil, en date du 11 Novembre, 1837, avec un Acte de Parlement y annexé, il a été ordonné, après lecture d'icelui, que le dit Ordre sera enregistré, et que le dit Acte sera déposé au Greffe pour faire partie des Records de cette Ile.

(*Adjourned.*)

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*Thursday, October 1st,* 1846.

*John De Havilland Utermarck, Esq., Contrôle de la Reine,* further examined.

John De Havilland Utermarck, Esq., Contrôle de la Reine.

October 1st, 1846.

4696. Does the Court sum up the law and the facts together?—The Bailiff sums up; and then each Jurat gives his opinion.

4697. The Bailiff sums up both the law and the facts?—Yes.

4698. After that summing up, do the Jurats decide?—Then each Jurat gives his opinion upon the law and the fact.

4699. Is there any other decision than that?—No; unless the advocate for the prisoner should have raised any point of law before the witnesses have been heard. Supposing it has come to the close of the evidence, the Bailiff sums up upon the law and the fact.

4700. Is sentence then pronounced upon all the points at once?—Yes.

4701. And the amount of punishment?—Yes, by each Jurat individually; the law officers having previously given their conclusions, as to what punishment should be awarded.

4702. You are aware that the course pursued in Jersey differs slightly from this practice?—Yes.

4703. There, after the decision of the fact, the conclusions of the law officers are given; and then the sentence is pronounced.—Yes; and I have recommended, here, that there should be a decision, first of all, upon any point of law raised by the counsel, then, a decision upon the fact of Guilty or Not guilty; and, after that, that the conclusions of the Crown lawyers should be given upon the amount of punishment, and that question again put to the Court.

4704. Will you be good enough to tell the Commissioners what the distinction is between the cases which come within the Procès Ordinaire and the Procès Extraordinaire?—It is rather difficult to distinguish exactly. When, in the acte d'accusation, we make use of the word félonieusement, the procès takes place au Grand Criminel: that is the rule.

4705. What are the cases in which you use the word félonieusement?—Every thing above larceny; cases of burglary and robbery. Our usual word for larceny is "Vol."

4706. Is simple vol ever laid félonieusement?—No, not simple vol. Vol avec violence, or avec effraction, is laid félonieusement.

4707. Would a simple vol nuitamment be laid félonieusement?—No. I should, perhaps, also add that, in cases where a prisoner is brought up on a number of charges of vol together, in practice, he might, then, be indicted félonieusment.

4708. Mr. *Carré.* Not unless some of them were avec effraction, or avec violence.

4709. Mr. *MacCulloch.* I should say not. It is necessary, I think, that, at least, one of the chefs d'accusation should fall under that head.

4710. The *Contrôle.* There are cases of vol avec effraction, or avec violence, with only one count, having been tried not au Grand Criminel: and I may also add that, I believe, of late years, some cases, which would formerly have been tried au Grand Criminel, have been tried à l'ordinaire.

4711. The *Bailiff.* I believe there are cases where the act has been laid félonieusement, which, by leave of the Court, have been tried au Criminel Ordinaire. That is a matter of convenience to the prisoner, as he can be tried much sooner, after his committal, à l'Ordinaire than à l'Extraordinaire.

4712. Mr. *MacCulloch.* Suppose the offence to be charged félonieusement, which is the nature of the class of offences generally so described, and supposing the circumstances to be such as not to render it probable that a heavy punishment will be inflicted, the Court have authorised the

Crown lawyers to proceed à l'Ordinaire: but in such cases, the Court feels itself bound to inflict no higher punishment than would be usually inflicted in a Procès à l'Ordinaire. They could not punish a man, for example, by more than six years banishment.

4713. (To Mr. *MacCulloch.*) By deciding to take it in that form they limit the punishment?—Yes.

4714. In that case, is it charged, in the proceeding à l'Ordinaire, félonieusement?—Yes; therefore the prisoner never objects to it, as he makes sure of not having his goods forfeited, and of not being transported or banished for more than six years.

4716. (To the *Contrôle.*) Is it competent, in the case of a simple vol, not laid avec effraction, but laid félonieusement, for the counsel for the prisoner to object to the acte d'accusation?—Yes; it would be competent to him. If I understand you, you ask, whether, if in the case of a simple vol the Crown lawyers should have inserted the word félonieusement, it would be competent for a prisoner's counsel to argue that it ought not to be so laid?

4717. Yes. Then, assuming the charge followed by Procès à l'Ordinaire, could the counsel, of strict right, object?—I conceive, that he could argue it, upon the ground that it was not in conformity with the technical rule.

4718. At what time would that objection be taken?—He might object, either before the evidence was heard, or take the objection in his address to the Court upon the whole case. If the proceedings were au Grand Criminel he would have no opportunity till after the close of the case.

4719. Might not he do it before the evidence was read?—Yes.

4720. What would be the effect of such an objection?—It would depend, I think, in some measure, upon the time when it was taken. I certainly conceive, if it was taken after the evidence had been heard, and it was admitted by the Court, it would then amount to an acquittal.

4721. Do you think a subsequent charge might be brought à l'Ordinaire, leaving out félonieusement, or would the previous acquittal be an answer to that?—It has never been the practice to proceed a second time, after there has been an acquittal; and that question has never been raised, that I am aware of, in any case.

4722. As we understand, after the acte d'accusation is made out, the next process is that the prisoner is called upon to plead. Might not he take his objection to the acte d'accusation, in the first instance?—He might. It has been done on some occasions. In some cases, the prisoner instructs the counsel before. I have argued the point myself in that way.

4723. Mr. *MacCulloch.* The class of cases in which it is done is where the prisoner is out upon bail.

4724. The *Contrôle.* In all cases the counsel would consider it advantageous to keep it to the end. I have always been of opinion that, if a case of that kind were to come before the Court, the Court would be justified in following the principles of the English law, looking at the two indictments, and seeing whether they contained the same offence or not. But the question, I believe, has never been raised on any occasion; and, whenever a prisoner has escaped through some technical error in that way, I have never known a fresh indictment preferred.

4725. If the Court were to proceed to find the fact of guilt and pronounce sentence after having so found the fact of guilt, could the objection be taken?—No.

4726. Supposing the objection were taken before the evidence was read, what would follow?—If the objection were taken before the evidence was read, I conceive that the course taken by the Crown officers would be this. I conceive that, on hearing the prisoner's counsel argue the point, supposing that point to be good, their course would be to move the Court to quash that acte d'accusation and allow them to begin afresh. The case of the soldiers mentioned in the proceedings of yesterday is analogous. In that case the prisoners had pleaded to the charge, and had chosen counsel. After that, the Crown officers found that the name of the female was wrongly laid in the acte d'accusation; of course, they knew that that point would be taken on the trial, and that the prisoners would probably escape through that error. They, therefore, asked the Court to quash the proceedings, and allow them to begin afresh, which course was opposed by all the counsel for the prisoners, who insisted that the same rule applied to criminal cases as to civil, and that the acte d'accusation could not be changed. The Court, by a considerable majority, allowed the accusation to be quashed and a new one framed; and, in consequence of that precedent, I presume that, supposing a counsel to argue a technical error at the first stage before the witnesses were heard, the Crown officers would follow that course.

4727. The supposition you are making now is that the objection is taken antecedent to any evidence being taken?—Yes.

4728. Au Grand Criminel the evidence is taken before a different tribunal?—Yes.

4729. Then, if upon the day of trial the objection were taken before the evidence had been opened, would not the same rule apply exactly?—Yes, if taken before the officers of the Court begin to read the first deposition.

4730. The suggestion you have already made is on the supposition that the officers for the Crown consider the objection a fatal one. But, supposing they think they can maintain the acte, so that the Court is obliged to pronounce a judgment, what would be the result?—I haven ever seen any fresh case put after a result of that kind at all.

4731. Do you think the Court would follow the English practice?—I conceive so. I mean to say that there is no principle of our law which is opposed to that. But the reason I am not very clear upon it is that, it being to the counsel's advantage to take the objection afterwards, it is scarcely ever done before. I have suggested, in my answers, that that right should be limited, and that the counsel should be bound to argue any point of that kind before going into the facts of the case.

4732. Several gentlemen have suggested that the Procès au Grand Criminel, as far as it differs from the Procès à l'Ordinaire, might be abolished?—Yes.

4733. What do the Jurats generally think of that suggestion?

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4734. Mr. *Carré.* I believe the object of taking the evidence in writing was to enable the Court to weigh the evidence more accurately and more carefully: but, if it has that advantage, it has also the disadvantage of preventing the Court from giving its due weight to the evidence of each witness, which can only take place when the witness is seen in delivering his evidence.

4735. The *Contrôle.* I would wish to remark, upon the first of those points, that, if the English system were followed here, of the depositions taken before the committing Court being taken down in writing, that would obviate, in some measure, the difficulty mentioned by Mr. Carré. I have heard Jurats say that, in cases of great importance, they like to have the evidence at home, and to consider it carefully in their own closets. This I consider very objectionable.

4736. Is there any considerable interval between the hearing of the evidence and the judgment?—There is usually an interval, because the evidence must be copied out. There must be two copies made, one for the prisoner's counsel and one for the Crown counsel.

4737. Supposing the trial to take place au Grand Criminel, are not the depositions then read before the Court at the trial?—Very often the Court get hold of them before that.

4738. How do they do so?—There must be two Jurats present at the time the evidence is taken in writing. In important cases, there are generally more than two. Those Jurats, very often, take copies of the evidence themselves at the same time as the Greffier. Others go to the Greffe, and copy it for themselves there, or get it from the Greffe. That is one of the greatest objections to the whole system.

4739. That may probably illustrate the way in which some gentlemen may consider it an advantage?—Very possibly.

4740. You look upon that consideration of the evidence, which you say takes place before the actual trial, as a great objection?—Yes. They come to try a cause the whole evidence of which they sometimes know by heart before they come into court.

4741. In criminal cases, is it usual for the Court to take time between hearing the conclusions of the law officers and pronouncing their sentence? Do they adjourn for the purpose of considering their sentence?—I have never known the Court adjourn. The sentence is always delivered at the conclusion of the proceedings, both à l'Ordinaire and au Grand Criminel. The only reason for which I have ever known the Court stop the proceedings has been the lateness of the hour, adjourning from one day to the next; and, in doing that, they would usually choose the moment when the evidence is finished. In cases au Grand Criminel, I cannot conceive any case in which the Court would ever take that step, because, as the whole of the evidence is in writing, it necessarily takes a much shorter time than the hearing of the evidence vivâ voce.

4742. A l'Ordinaire, do the jurats take notes of the vivâ voce evidence?—Most of them do.

4743. The *Bailiff.* If you ask the question as an English lawyer, I should say no; that is to say, they do not take the same notes as an English Judge would do. They take notes of such matters as strike them to guide themselves.

4744. (To the *Bailiff.*) You probably take fuller notes?—I do not take the same notes as an English Judge would take; nor do I conceive there is the same authority attaching to my notes.

4745. As you generally sum up the law and the facts, possibly the Jurats, who have not taken full notes, might sometimes say to you, will you let me know exactly what such a witness said?—What is a great impediment to taking notes, and renders it impossible to take the full note that an English Judge would, is the practice, which came before the Commissioners yesterday, of setting a man on upon his story and making him go on without stopping till he comes to the end. While that is going on, the utmost you can do is, just to take down those matters on which it is necessary to examine him further. I do not consider the Bailiff's notes as of any authority whatever. I should not send them as notes of the trial.

4746. What would guide the discretion of a Secretary of State, in the case of a sentence à l'Ordinaire and an application for a pardon?—I have applied for a pardon, not in a case à l'Ordinaire, but in a police case: and I applied in consequence of facts that came to my knowledge in a subsequent investigation au secret. Of course, whatever notes I might take in other cases, in point of fact, in a secret proceeding there are are no notes: but I stated the facts that had come to my knowledge; and a pardon was granted.

4747. Could this alteration be introduced? Assuming in all other respects the system to remain unaltered, that you should say to the Jurats, "I consider the law is so and so, and the questions of fact are these;" that, then, the opinion of the Jurats as judges should be taken on the law, and, that that being decided, they should determine upon the facts distinctly afterwards. Do you think that could be done?—I have occasionally, in my summing up, stated the point of law as it appeared to me clearly, without expressing any strong opinion as to the facts, but leaving them very much to the Jurats.

4748. That is, strictly, unconstitutional here, is not it?—I have sometimes, probably, abstained from expressing so strong an opinion upon the facts as it was necessary for them to do.

4749. Might not the law be laid down peremptorily first, and then the Jurats have the facts submitted to them?—I think it would be very difficult. Supposing the Bailiff proposes certain propositions as being the law of the case applicable to the facts, and the Court is of his opinion by a majority of five to four, I think the minority would be placed in a great difficulty. They would have either to follow their own judgment against the majority of the Court, or they would have to apply the facts to legal propositions which they thought erroneous.

4750. You think they could not be brought to consider the decision come to as peremptory, and acquitting their consciences up to that point?—I think it would be very difficult.

4751. Mr. *Carré.* The present system operates in favour of the prisoner, of taking the opinion concerning the law and the fact at the same time and individually from each Jurat. One Jurat, for instance, may consider the law to be in favour of the prisoner and the evidence

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to be against him; and then he would acquit: and another Jurat may conceive the law to be against the prisoner but the evidence not to make out the charge; and then, he would acquit also.

4752. The *Contrôle.* With regard to one particular point, if the counsel for the prisoner were obliged to plead all errors in the acte d'accusation, before going into the facts, that would, of course, compel the Court to decide that point by itself, and would relieve the summing up of that particular point. That, however, is a small matter; it only takes that particular portion of the difficulty away.

4753. The *Bailiff.* The only advantage, almost, of the proceeding au Grand Criminel is that, if there is an application for a pardon or, as there used to be, for a commutation of punishment, all the proceedings can be sent to the Privy Council. In other cases, that cannot be, unless you make it the duty of the Judge to take notes: and, if you do that, you will alter, to a considerable extent, the mode in which the evidence is taken; because it must be taken more slowly, and that would interfere with that mode of taking evidence which many people here think to be highly desirable.

4754. (To the *Contrôle.*) What is the interval, generally, between the judgment and the execution of the sentence?

4755. The *Contrôle.* The sentence is executed immediately.

4756. Without time for a pardon?—Certainly, without time for a pardon, except in cases of death. In cases of death, there is a certain interval given between delivering judgment and its being carried into effect.

4757. During which interval a pardon may be asked for?—Yes; but, in cases of imprisonment or other corporal punishment, it is inflicted immediately.

4758. In the case of whipping or the pillory is it so?—Whipping has not been inflicted of late years: but, I believe, in practice, it has been inflicted upon the very day that the man has been tried, though not invariably so. That day week would be the usual course now, I think.

4759. The *Bailiff.* Whipping is quite within the power of the Court now; and I have suggested it, in one case, within this twelvemonth.

4760. Mr. *De Courcy.* I was threatened with it myself by the Court in private.

4761. When was that?—In 1826.

4762. The *Contrôle.* There was the case of a boy, not above three or four years ago.

4763. It was the practice to execute such sentences immediately, was it?—Yes; I fancy now that it would be deferred.

4764. The *Bailiff.* I believe whipping has been accustomed to be a public punishment. should recommend it to be done privately.

4765. The Commissioners had, in Jersey, some evidence that, according to strictness of law, sentences were obliged to be executed as soon as pronounced?—That was the practice here.

4766. Mr. *Jeremie.* I believe what opened the eyes of the Court was the affair of Pecqueur. He was flogged; and, after his having been flogged, the Privy Council remitted that part of the sentence. I remember that case very well. He was flogged according to the usual system; that is to say his punishment was ordered one minute, and the next minute the bordiers attended here with their halberts and took him off to the place of execution; the Procureur, the Contrôle, the Greffier, and, I believe, all the law officers of the Crown, holding the Queen's commission, except the Bailiff, attended the execution. After his having been flogged, the week following, that part of the sentence was commuted; and, since then, I believe, the opinion has generally prevailed to give a week. When a man is sentenced to be hanged, it is on the Saturday; and, I believe, in the notes, you will find he is executed on the Friday following. They give in that case a week.

4767. The *Contrôle.* That was the old practice. In the last case, further time was given.

4768. Mr. *Jeremie.* That was upon application. I am speaking of the law. It is true the Court has sometimes put it off upon application; but, I think, the Commissioners can take, as the general rule, that all punishments are executed immediately after they are ordered.

4769. When you say they commuted this sentence, we suppose you mean they remitted that part of it, not that they substituted any other?—No; they remitted a part of the sentence. He was condemned to be transported to the penal settlements, and to be flogged besides. The Executive remitted the flogging, and ordered the transportation; but, as this man had been flogged in the interval, he had both punishments.

4770. (To the *Contrôle.*) Do the Court ever exercise the power themselves, after passing sentence, of remitting a part of the sentence?—No; I think not.

4771. Was not there something of that kind in Percy's case?—That case was this. A man of the name of Percy was condemned, in the Court of Police, to one month's imprisonment, part of which was to be on bread and water. During his incarceration, his medical attendant came to the Court and declared upon oath; I rather think there was another medical man also heard; but one medical man certainly declared, upon oath, that it would be dangerous to his health to inflict that part of the punishment of bread and water. He was a man of intemperate habits; and his health was impaired; and the medical man stated that it might be dangerous to his life to carry that part of the sentence into execution: and, I believe, that part was omitted.

4772. (To the *Bailiff.*) Supposing it turns out, after sentence, that medical reasons render the carrying out of the sentence improper; is there no power at all, without sending to the Crown, of commuting it?—I am not prepared to answer that.

4773. The *Contrôle.* It has been done, on one or two occasions. I have known it refused: but, on very peculiar occasions, where medical men have made strong statements on the subject, as in Percy's case, it has been granted.

4774. The *Bailiff.* Upon a person's health being in danger, whether the Court has the

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power to open the prison doors and let him out, I cannot give an opinion. In cases of debt, or cases of contempt, I apprehend the Court has power to moderate the punishment.

4775. (To the *Contrôle.*) Is there any record kept in the Acte of Court of what actually was done in the case of Percy?—Yes.

4776. *The entry was put in, and is as follows.*

Le vingt-deux Février, mil huit-cent quarante-quatre, devant Monsieur le Baillif, présens Hilary Olivier Carré, Thomas W. Gosselin, et Harry Dobrée, Ecrs., Jurés.

Antoine Power Percy, du Comté de Suffolk, en Angleterre, ayant été ce jour produit devant la Cour par Mr. Thomas Brehaut, un des Connétables de la paroisse de Saint Martin, étant accusé d'avoir sans aucune provocation quelconque attaqué deux soldats, sur la grande route, en la dite paroisse, et d'avoir frappé l'un deux avec un bâton qu'il avait en main, dont s'ensuivit meurtrissure et effusion de sang : la Cour, après avoir entendu des témoins dignes de foi, ouies les conclusions du Contrôle de la Reine, a condamné le dit Percy à un mois d'emprisonnement dans la prison publique, dont les premiers quinze jours seront au secret au pain et à l'eau. Mais, subséquemment, sur la déclaration de Gladstane Carey, Ecuyer, Chirurgien, que les habitudes et la santé du dit Percy étaient telles que sa vie serait en danger, s'il était gardé au pain et à l'eau, la Cour, ouies les conclusions du dit Contrôle de la Reine, a remis cette partie de la sentence."

4777. The *Contrôle.* I think there are one or two other cases, which can be found. I recollect applications having been made, and I recollect applications being refused. I think there is a case where a man was in solitary confinement, and the doctor declared that air was necessary o him, and he was allowed one or two hours a-day to walk in the court yard.

4778. (To the *Bailiff.*) Should you consider you had the power of altering the punishment awarded within any limit of time?—In England, the sentence may be altered within the same session.

4779. Mr. *Carré.* It is put in execution here the moment it is pronounced.

4780. The *Contrôle.* Technically, it is vox missa the moment it is pronounced.

4781. The Governor has a limited power of imprisonment; has not he?—Yes.

4782. For how long?—For twenty four hours. It is by an Order in Council.

4783. Judgment is given, not upon the different chefs d'accusation, but as one general decision, is not it?—Yes. In one or two cases, the Court have motivé their decision.

4784. What is the technical form in which the sentence is recorded?

4785. Mr. *MacCulloch.* In cases in which a party was found Guilty of the whole of the offences charged, it used to be the practice to register the sentence as follows. "A. B. amerci envers les officiers de la Reine en la cause qu'ils ont encontre lui à se voir adjugé pour avoir" (setting out the whole acte d'accusation) : "et est le dit A. B. condamné à" (such a punishment). But, if found Guilty only of part of the offence charged, the sentence was registered as follows. "Sur l'action des officiers de la Reine contre A. B., à se voir adjugé pour avoir" &c. (setting out the acte d'accusation) : "après preuve d'avoir commis" (stating the offence proved). "Est le dit A. B. amerci envers le dits officiers de la Reine et est condamné à" (such a punishment).

4786. The *Contrôle.* The modern practice has been that the second form has been universally followed: but in one case, not long ago, the decision of the Court was motivé.

4787. Has there been, do you think, any modification in the practice since there has been a Judge from England presiding on the bench?—I think there have been points of technical order better put than they were before.

4788. As to the way, for instance, in which witnesses are examined, whether longer or shorter?—No; I think not. I think, there has been a little more regularity, as to proceedings au secret, but no fundamental change certainly.

4789. Mr. *Jeremie.* It would be right to say that, when a prisoner is condemned here, he pays costs, when he is "amerci;" but, when the Crown is "au silence," the defendant gets no costs.

4790. (To the *Contrôle.*) What is the amount of costs which a prisoner would incur in that way?

4791. The *Contrôle.* In cases au Criminel Ordinaire, something under 5*l.* I do not think they can exceed 5*l.* in the Procès Ordinaire; about 5*l.* I should say. In cases au Grand Criminel, the costs would be double.

4792. Are not his goods confiscated au Grand Criminel?—Yes, generally they are; but, au Grand Criminel, the Court may pass a minor sentence without confiscation. The lowest degree of punishment involving confiscation is banishment for seven years.

4793. Does the Court inflict costs where there is confiscation?—Yes; the sentence runs always with costs. It is a superfluity; but it does run so. There is nothing to prevent the Court from inflicting au Grand Criminel, and there are many cases where the Court has inflicted, a lesser sentence than that, where confiscation would not ensue.

4794. He gets no costs if he is acquitted?—No; and the costs which I have mentioned are the costs he has to pay. Those are, of course, independently of the costs of his own defence.

4795. What is the process for recovering costs?—An account is sent to the prisoner, followed by a summons and a prise des biens; on which he is sued in the same way as on any other debt.

4796. Have debts to the Crown a preference here?—No. There are particular privileges as to suing in a particular way; but that applies to all cases of costs. Costs are very seldom recovered. I should say that the average is not more than two prosecutions a-year in which costs are received. The average, for the last ten years, I think, would not give that even.

4797. The *Procureur.* In practice, his own costs are always borne by the party accused; though I find in Terrien, book xii., chap. 42, these words :—"Car le Roy doit justice et doit estre content de la peine corporelle ou pecuniaire qui luy est adjugée. Aussi au contraire le Procureur du Roy n'est condanné en aucuns despens, si l'accusé est absous."

4798. Is that allowed?—It is not allowed; but the Approbation says: "Au lieu dudit quarante-deuxième chapitre, nous usons pour les fraix et coustages des Criminels exécutez,

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que le Prince les porte, et en est chargé; mais qu'estant délivrez sans confiscation de leurs biens et punition corporelle, ils sont portés par les parties mesme, sans aucune charge au Prince."

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Charles de Jersey, Esq., Procureur de la Reine.

*Charles De Jersey*, Esq., Procureur de la Reine, further examined.

4799. What are the legal authorities of Alderney?—The President of the court, who is called the Juge, six Jurats, a Greffier, and a Prevôt.

4800. Is the Judge called the Bailiff?—No; the President of the Court is called Le Juge.

4801. Who appoints the Judge?—The Crown.

4802. By whom are the Jurats appointed?—They are elected.

4803. Is Alderney divided into more than one parish?—No; there is but one parish.

4804. Do you happen to know in whom the right of voting for Jurats is vested in Alderney?—In the rate payers.

4805. By whom is the Greffier appointed?—By the Crown.

4806. And the Prevôt?—No; the Prevôt serves for a limited period. There are twelve officers appointed called Le Prevôté, who serve the office of Prevôt for one year each.

4807. Mr. *MacCulloch.* They consider it a very onerous office, because they have no prison, and they are bound to keep prisoners as they can. I believe they lock them up in a room and watch them.

4808. (To the *Procureur.*) Twelve persons, you say, constitute the Prevôte; and one serves every year in the office?—Yes.

4809. Is there any constable in Alderney?—Yes.

4810. More than one?—There are two constables, and two deputy constables.

4811. Are they elected officers?—I suppose they may be all four elected officers; but I am not certain as to the two deputies.

4812. Do the Judge and the six Jurats compose a Court of Justice?—Yes; but they have no criminal jurisdiction; by which, I mean to say that they could not decide on any crime.

4813. Is that taking crime in its technical sense, or do you mean that they could not decide on any offence?—Not upon any criminal offence. When an offence is committed in Alderney, the offender is taken up and brought before the Alderney Court.

4815. By the constable?—Yes; or the assistant constable.

4816. Is that before the Judge alone?—Before a quorum of the Court, composed of the Judge and two or more Jurats.

4817. What takes place then?—The witnesses are examined, and the interrogatory of the prisoner taken.

4818. Are the depositions of the witnesses who are examined taken in writing?—Yes. Then, if the Alderney Court considers that there is sufficient evidence to put the prisoner on his trial, it makes an acte of Cour, referring, I believe the proper word is, the matter to the Guernsey Court.

4819. If it so happens that the Alderney Court should think there is not sufficient evidence, what is the result?—They exercise a discretionary power.

4820. They would dismiss the charge?—Yes.

4821. Their power, therefore, consists in examining, and dismissing or committing?—Not committing; they refer the matter to the Guernsey Court. Then, they give a copy of that acte and a copy of the depositions to the Alderney Prevôt, who takes charge of the prisoner, and brings him to Guernsey. The Alderney Prevôt waits on the Bailiff and one of the Crown lawyers, to apprize them that he has a prisoner, and gives, usually to the Crown lawyers, but to one or the other, the acte of the Alderney Court and the depositions, at the bottom of which is the Interrogatoire. The Bailiff convenes a Cour Ordinaire, where the Interrogatoire and the depositions are examined; and, if the Cour Royale be of opinion that the offence is of a nature to be tried, and that the evidence, as taken by the Court of Alderney, may be sufficient, they order the witnesses to be sent over from Alderney on a particular day; and, on the arrival of the witnesses in Guernsey, they appear before the Cour du quartier; and there the whole matter is commenced de novo. The not having the witnesses, in the first instance, from Alderney has been in consequence of a modern Ordonnance of the Court.

4822. Of the Court of Guernsey?—Yes. It was passed in consequence of a number of witnesses coming over and remaining in the Island a very long time, in a case in which, after examination, it was not thought necessary to commit the parties.

4823. In the case of any small offence, which amounts to a mere contravention of Police regulations, would the parties be brought over to the Court of Guernsey?—In practice, for the contravention of Police regulations, it is not done. I have not known it done for many years.

4824. Do you know what becomes of the people who happen to offend in that way?—I suppose they punish them; but I do not think they have authority.

4825. Mr. *MacCulloch.* I believe, in practice (I do not know how far it is founded in law), the Court in Alderney consider themselves authorized to inflict a fine not exceeding three livres tournois, that is, four and three pence halfpenny sterling. They do not consider that they are entitled to imprison.

4826. (To the *Procureur.*) They have no prison, have they?—I think they had a kind of lock-up house in what they call the market. I believe they have none now. Occasionally, the thing has been put in this way, though, of course, it is very irregular. They tell a man charged with a trifling offence, if you will leave it to us, and not insist upon being sent to Guernsey, we will condemn you to a slight imprisonment, which I believe they do occasionally; an imprisonment of a couple of days, as it were by consent.

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4827. Do you know from whence the jurisdiction of the Judge and Jurats, in Alderney, is derived, such as it is?—No; it is very ancient.

4828. Have they any power of making Ordonnances or laws to regulate the internal affairs of the Island of Alderney?—The States have; but not the Court.

4829. There are also States there, are there?—Yes. I would impress it upon the Commissioners that giving an authority to the Alderney Court, say to imprison as far as eight days, or to fine as far as fourteen livres, would be a very proper thing to do, in my opinion.

4830. You would give them a police jurisdiction?—Yes. I should say that giving them a right to imprison for eight days, and a right to fine as high as fourteen livres, would be a very proper thing.

4831. You say, there are States also in Alderney; are they identical with the Court?—Nearly so: I believe they are composed of the Judge, six Jurats, and the Procureur de la Reine. I do not know whether the Contrôle is considered a member of the Court or not; of course, the Lieutenant Governor and the Douzaine.

4832. The Lieutenant Governor of Guernsey is now the Governor of Alderney, is he not?—Yes: and, in practice, no meeting of the States takes place without his consent. The Lieutenant Governor of Guernsey generally sends a special Commission to some individual in Alderney, to attend the meeting as his representative: and, I believe, he is sworn in to assist the Lieutenant Governor for the day.

4833. How many does the Douzaine consist of?—Of twelve.

4834. Do you know whether the Douzaine is a similar body to that which is called the Douzaine in this island?—I believe precisely so. I do not know whether the whole of their functions are precisely the same.

4835. Do you know the limits within which they have the power of making laws?—I do not. I consider that a great part of their Ordinances are police regulations. There is a recent case in which, after a change had been effected in the laws of inheritance here, the States of Alderney submitted to Her Majesty in Council a plan of certain modifications in the laws of inheritance in Alderney, which was confirmed by the Privy Council. Some of the details which have been adopted in Guernsey were found inapplicable to Alderney.

4836. Have the Cour Royal of Guernsey any power of reviewing those Ordinances at all, or in any way deciding on their validity?—They are never submitted to them for confirmation: but I have known instances of petitions presented to the Royal Court of Guernsey by inhabitants of Alderney, complaining of Ordinances made by the Alderney States.

4837. Do you know what took place on any of those occasions, or in what shape the proceedings came before the Court?—By petition.

4838. Would that be to the Court in its legislative capacity?—Yes.

4839. Mr. *Le Retilley.* In 1820, I see in a note in a book which I have, "Sur le différens entre la Cour et les Etats d'Auregny, savoir qui a le droit de passer les Ordonnances, la Cour de cette Ile ordonne que, provisoirement, ce droit ne sera exercé que dans les Etats." It appears that these differences had been referred by the Court and States of Alderney to the Cour Royale.

4840. Mr. *MacCulloch.* In an index of subjects which I have kept, I find: "La Cour d'Auregny transmettra les causes en crime à la Cour Royale. Réglemens des Commissaires 1585; et ainsi jugé 1726. April, 1823, 8th May."

4841. (To Mr. *MacCulloch.*) Are Ordinances passed in Guernsey considered binding in Alderney?—It is sometimes ordered that the Ordinance shall be transmitted to the Island of Alderney to be carried into force there. I believe there is some passage which states that the Court of Alderney is bound by the Ordinances of the Royal Court which affect the mode of proceeding.

4842. Mr. *Le Retilley.* They are transmitted to the Greffier of the court of Alderney to be carried into effect there.

4843. Mr. *MacCulloch.* I find in my book, at the date 1757, 14th of June, a jugement in a case on appeal from Alderney, decided by the Royal Court of Guernsey. It would appear, by the note, to have come originally in the shape of a petition to the Cour Ordinaire in Guernsey, and then as an appeal to the full Court. It was on the subject of a Jurat elected in Alderney; and the petition is rejected. In 1826, September the 16th or 19th, an Ordonnance of the Royal Court of Guernsey was registered in the livre des Rentes, to the effect that an Ordonnance of the States of Alderney prohibiting the Banon, that is, cattle being left at large on the Blaye, was confirmed; and a petition of various inhabitants against that Ordonnance was rejected. Here is an Ordonnance, aux Chefs Plaids, of 1785, the 3rd of October, which declares that the Court of Alderney has no power to disallow the actes of the States of Alderney, but may complain against them to the Royal Court of Guernsey. In 1810, June the 5th, the States of Alderney having made an Ordonnance authorising the levy of a duty of 1*s.* per gallon on all spirituous liquors imported into the Island on account of strangers, it is ordered that the States shall give their reasons for having passed such Ordonnance, and, in the mean time, that the duty shall not be levied. On the 16th June of the same year, a few days afterwards, the said Ordonnance was disallowed.

4844. Was that in Chefs Plaids?—Yes; it was by the Court in its legislative capacity.

4845. Mr. *Le Retilley.* Here is an Acte of the Royal Court of Guernsey in the case of a complaint of the Governor against the Court of Alderney.

*The same was read as follows.*

"Jeudi, le douzième Décembre, mil huit-cent seize, devant Monsieur le Bailli, présens Pierre de Jersey, Eléazer Le Marchant, Carteret Priaulx, Daniel De Lisle Brock, Jean La Serre, Pierre Le Pelley, et Jean Guille Ecuyers Jurés.

La Cour, aujourd'hui assemblée en conséquence de son Acte du 23e Novembre dernier, pour faire

droit sur la plainte de Jean Le Mesurier, Ecuyer, Seigneur et Gouverneur de l'Ile d'Auregny, en date du 13e Novembre, 1816, contre la Cour d'Auregny, et la réponse de la dite Cour, en date du 3e courant, dans laquelle la dite Cour annonce son intention de s'en remettre à sa dite réponse sans être entendu par Avocat, après avoir entendu le dit Monsieur le Gouverneur par ses Avocats, a jugé que la Cour d'Auregny n'aurait pas dû objecter à la licence donnée par le dit Mr. Le Gouverneur à Simon Le Vallée, Cabaretier, pour les raisons insérées dans son Acte du 3e Février, 1816, n'y ayant rien, dans l'Acte de la Cour Royale du 11e Juin, 1812, qui puisse autoriser leur objection, et Monsieur le Gouverneur ayant droit de prendre tous ses titres en donnant la dite licence. Quant aux raisons, alleguées depuis dans leur réponse, fondées sur l'absence de Monsieur le Gouverneur hors de l'Ile d'Auregny à cette époque du 3e Février, 1816, la Cour ne cense pas qu' elles soient de nature à priver Monsieur le Gouverneur de son droit de donner les licences aux cabaretiers: partant ordonne à la dite Cour d'Auregny d'accepter la dite licence de Simon Le Vallée et les autres licences de la même nature.

Sur le second Chef, la Cour juge que la Cour d'Auregny auroit dû et doit enregîtrer les lettres de Monsieur le Gouverneur qui nommoient à la charge de Lieutenant Gouverneur et à l'office de Contrôle du Roi, et qu'elle le doit, dans tous les cas où il s'agit de nomminations publiques, quoique la Cour cense que, dans tous les cas, il seroit plus régulier pour Monsieur le Gouverneur d'addresser ses lettres, nommant aux dites nomminations, directement à Monsieur le Juge ou le Président de la Cour d'Auregny.

Quant au troisième Chef, la Cour juge que Monsieur le Ber, ayant été sermenté par acte de la Cour d'Auregny du 31e Janvier, 1803, et du consentement du dit Monsieur le Gouverneur, Receveur Général des droits et revenus de Sa Majesté, il doit prendre, en donnant les congés de Monsieur le Gouverneur, cette même qualité, aussi long tems qu' il sera conservé dans la dite charge par le dit Monsieur le Gouverneur. Et sera ce présent acte transmis à la dite Cour d'Auregny par le Greffier ou Deputé Greffier du Roi, afinqu' il soit duement enregitré sur les records de la dite Ile et observé."

4846. The *Procureur*. I have here the printed case, in the Appeal of the Court of Alderney against the Governor of Alderney, in which I find various documents set out upon this subject. Among others, I find the following.

"Orders established in the Island of Alderney by the Honourable Sir Thomas Leighton, Knight, Captain and Governor under Her Majesty the Queen of England, our Sovereign, in the Island of Guernsey, and by Mr. Thomas Wigmore, his Lieutenant, in the said Island, being appointed Commissioners, authorized by the Lords of Her Majesty's most Honourable Privy Council, according to their Lordships' Letters, dated at Greenwich the 21st June, in the year of our Lord, 1585, as well to hear and determine the causes in dispute between John Chamberlain, Esq., holding the said Island of Alderney in fee farm under Her Majesty, and the inhabitants of the said Island, as to examine and correct the abuses and disorders committed in the said Island, as well in the government as in the administration of justice in the said Island." The following is the 10th Article, which is now the law of the Island. Item; "It is ordered that the Jurats of the said Island shall execute and administer justice, in all causes arising in the said Island, according to their privilege, without any hindrance from the said John Chamberlain or of his heirs; and that the said Jurats shall suffer appeals to be made, and shall refer criminal causes to the Royal Court before the Bailiff and Jurats of the Island of Guernsey, as was always the custom; and they shall regulate their judgments and proceedings according to the laws and constitutions used in the Island of Guernsey, and of all proceedings and judgments made and issued by the said Jurats, they shall keep a good and faithful record, as they will answer to the contrary. Concluded and settled in the said Island, the last day of the month of September, in the year of our Lord, 1585."

I find here also the heading of an Ordonnance passed by the States of the Island of Alderney.

*The same was read as follows.*

4847. "At an Assembly of the States of the Island of Alderney. In presence of John Le Mesurier, Esq., Lord and Governor of this Island, &c. &c. &c. The 4th of December, 1809. Before Mr. Peter Gauvain, Judge; present, Messrs. Thomas Le Cocq, John Le Ber, Nicholas Barbenson, Nicholas Ollivier, Thomas Nicholas Robilliard, and William Joseph Sanford, Jurats, and Messrs. Peter Le Cocq, Samuel Le Cocq, Nicholas Le Cocq, Thomas Simon, Nicholas Le Ber, J. W. Le Patourel, Peter Simon, Peter Gauvain, John Pezet, and Nicholas Gaudion, Douzainiers, representing the rights of the public."

4848. That shows how the States are held?—Yes. These are the proceedings referred to by Mr. M'Culloch as an Ordonnance of the 29th of October, 1785, sent from Guernsey to be registered in Alderney. The Commissioners will find that it annuls an Act of the Court of Alderney of the 11th of May, 1784. This is the translation.

*The same was read as follows.*

"The Judge having presented to the Court an ordonnance of the Chief Pleas of the Royal Court of the Island of Guernsey, bearing date the third instant, which has been transmitted to him by the King's Registrar in the said island of Guernsey, that it might be registered in the records of this Island: it has been ordered, after the same had been read, that it should be registered upon the said records, and that the Acte of this Court of the 11th of May, 1784, therein mentioned, should be annulled, agreeably to the said Ordonnance; which Ordonnance is expressed as follows."

4849. The *Procureur*. Then follows the Ordonnance of the Guernsey Court, referred to by Mr. M'Culloch.

*The same was read as follows.*

"At the Chief Pleas after Michaelmas, held on the 3rd of October, 1785, before William Le Marchant, Esquire, Bailiff, present, Charles Andros, Nicholas Reserson, Peter De Jersey, Elisha Tupper, Peter Falla, John Guille, Eleazer Le Marchant, Charles Mauger, Robert Porret Le Marchant, and Peter De Havilland, Esquires, Jurates.

The King's Procureur of this Island having, on the 1st of June, 1784, presented to the Court a petition from the King's Procureur of the Island of Alderney representing that the States of the said Island of Alderney having passed an Act, dated the 27th July, 1782, to regulate the number of sheep each inhabitant of the said Island might have to graze on the common lands of the said Island, according to the said Act; and that Messrs. Simon Gauvain, Phil. Pezet, and John Simon, Jurates of the Court of the

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said Island of Alderney, forming the majority of the said Court of Alderney, had passed an Act dated the 11th of May, 1784, by which they had suspended the above mentioned Act of the States of the said Island of Alderney, which the King's Procureur of the said Island of Alderney has represented to be contrary to the rights of the said States, and that the said Court arrogated to itself a right that does not belong to it; and this Court having, by an Act dated the above mentioned day, 12th June, 1784, sent a copy of the said petition to the said Court of Alderney, with an order to reply thereto: This Court, after having received and considered the answer of the said Court of Alderney (the opinions of the King's Officers being taken), has annulled, and does annul the said Act of the said Court of Alderney, of the 11th May, 1784, which is hereby forbidden for the future to suspend or annul any act of the States of the said Island of Alderney, but to have recourse to the Royal Court of this Island, in any case wherein they may think themselves aggrieved by an Act of the said States. And the King's Registrar is ordered to transmit this present ordinance to the Judge of the same Court of Alderney, to cause it to be registered on the records of the said Court, and to cause the above mentioned Act of the said Court of the 11th May, 1784, to be expunged therefrom. (Signed) Joshua Gosselin, King's Registrar. Extracted from the records by me, Thomas Williams, King's Registrar.

4850. Mr. *MacCulloch.* I will hand in this Ordinance in 1790, which defines some of the duties of the Prevôt of Alderney. It appears to have been upon some representations of the authorities in Alderney through the Crown Lawyers in Guernsey.

*The same was read as follows.*

" Aux Chefs Plaids d'après Pâques tenus le douzième Avril, mil sept-cent nonante, devant William Le Marchant, Ecuyer, Baillif, présents, Charles Andros, Nicolas Reserson, Pierre De Jersey, Elizée Tupper, Jean Carey, Pierre Falla, Jean Guille, Eléazar Le Marchant, Charles Mauger, et Robert Porret Le Marchant, Ecuyers, Jurés.

L'Honorable William Brown, Lieutenant Gouverneur de cette Isle, présent.

Le vrec à feu a éte élargi à la deux^me^ Marée d'après la St. Jean prochaine, et est défendu d'y aller avant sur les peines portées dans les Ordonnances en tel cas.

Les Officiers du Roi ayant informé la Cour que, le Prevôt du Roi de l'Isle d'Auregni, ou son député et douze officiers, formant la Prevôté de la dite Isle, étant obligés de garder tous prisonniers, soit pour crime ou pour dette en surété, et qu', ayant eu en leur garde Pierre Gaudion, accusé de vol, que le dit Pierre Gaudion leur auroit été enlevé et recous par force et violence par des personnes à eux inconnües; et pareïllment qu' un nomé Robert Way, lequel étoit en la garde de la dite Prevôté à la suite des Officiers du Roi de la dite Isle d'Auregni, auroit été enlevé par force et violence d'entre les mains du député Prevôt et du connétable de la dite Isle d'Auregni par des Anglois, qui si seroient aussitôt enfuis; come aussi que les només Jean Pezet et Nicholas Le Lièvre, accusés d'avoir été complices du vol, se seroient échappés d'entre les mains des officiers de la dite Prevôté, faute aux officiers de la dite Prevôté, qui en avoient la garde, d'en avoir pris un soin convenable; et que les Officiers du Roi de la d^te^ Isle d'Auregni auroient transmis aux dits Officiers du Roi les actes et procédures tenües à ce sujet par la dite Cour d'Auregni afin d'avoir le tout remis devant cette Cour, pour qu' elle en ordonne, et prenne les mesures qu' elle trouvera, en sa sagesse, les plus propres pour prevenir de pareïls abus et rebellion à justice: La Cour, prenant ce que dessus en considération, vû et examiné les dits actes et procédures, ouïe la conclusion des dits Officiers du Roi, a ordonné et ordonne que la dite Prevôté, sera tenüe de garder en surété et dans un lieu convenable les prisonniers qui seront comis à sa garde, à peine à la dite Prevôté d'en repondre. Et sont le Prevôt, député Prevôt et officiers de la dite Prevôté, et chacun d'iceux, ainsi que le connétable de la dite isle d'Auregni, ayant aucun prisonnier en leur garde, authorisés d'ordonner, au nom du Roi, à tous et au chacun d'avoir à les aïder et assister contre toutes voies de fait et de violence qu' on voudroit leur faire, soit pour recouvrer tels dits prisonniers, ou autrement dans l'exécution de leur charge; et par un même est ordonné à tous et au chacun d'aider et assister les dits officiers et chacun d'iceux, lors que par eux requis de ce faire, à peine d'en répondre à justice. Et est ordonné que ce présent acte sera transmis par le Greffier du Roi, ou son député, a Mons^r^. le Juge et Messr^s^. les Jurés de la Cour d'Auregni, pour y être enregîtré et publié de la manière accoûtumée, afin que personne n'en prétende cause d'ignorance.'

4851. (To the *Procureur.*) What is the principal officer at Sark?—The Seneschal.

4852. What is his office?—He is the judge of the Court of Sark; the only authority there.

4853. Are there no Jurats in Sark?—No: there were for a short time a Judge and four Jurats; but there are none now.

4854. Were the Jurats displaced by an Order in Council?

Mr. *Carré.* I think, being Presbyterians, they could find no one to take the oath which included the oath of supremacy.

4855. The *Procureur.* In August 23rd, 1672, by an Order in Council the Jurats were displaced, having refused to take the oath; and it is ordered that the Royal Court of Guernsey shall name a Seneschal. But a subsequent Order in Council of May 19th, 1675, directs that the Seneschal whom the Lord shall present shall be sworn in by the Court of Guernsey.

4856. *The same Order in Council was delivered in, and is as follows.*

CHARLES R. Trusty and wellbeloved, We greet you well, Whereas it hath been represented vnto us, by our trusty and wellbeloved, Sir Phillip Carteret, Bar^t^. Lord of the Island of Serke, that the Jurates of the said Island, having refused to take the oathes and subscribe the Declaration and receive the sacrement of the Lords Supper in such manner as by Law is directed: You, the Bayliffe and Jurates of our Court of our Island of Guernsey, have, according to the Act of Parliament in that behalfe made and provided, taken from them their civil authority; and whereas the rest of the inhabitants are poore and illiterate, or so auerse to the laws of the Church of England as to be incapable of becoming magistrates in the said Isle, and, thereby, the said Island hath remained, for above a yeare, without any administration of ciuil justice, to the great prejudice of our subjects there: We have thought fitt, and doe, hereby, order and direct that you, the Bayliffe and Jurats of our said Court of Guernsey, do give oath to a Seneschall, and establish such others officers as shall be requisite for the administration of the ciuil justice there, and who shall be named by the said Sir Phillip Carteret, in like manner as the said Sir Phillip doth at S^t^ Owen in Jersey, and other lords of the Islands of Jersey and Guernsey, do appoint in their respective Manners and Fees in the said Isles: and, for so doing, this shall be your warrant. And so We bid you farewell.—Giuẽn att our Court, att Whitehall, the 19^th^ day of May 1675, in the seaven and twentieth year of our reigne.

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4857. (To the *Procureur.*) What does the Seneschal do?—He tries all civil cases.

4858. What is his criminal jurisdiction?—He tries all small offences. He has the right to inflict a fine of three livres tournois, and may also condemn to twenty hours' imprisonment.

4859. In other cases, does he act as a peace officer, and send the prisoners over here?—Yes.

4860. Are there constables?

Mr. *MacCulloch.* There is a constable and a prevôt.

4861. How are they appointed?—The prevôt, I believe, is appointed by the Seigneur. The constable, I believe, is appointed by the forty tenants at their Chefs Plaids.

4862. Is the whole Island divided into forty tenements?—Yes. There is a Greffier also.

4863. How is he appointed?—By the Lord.

4864. Then, all the officers are appointed by the Lord of Sark?

4865. Except the constable, who is elected for one year.

4866. How can those officers be displaced?—The Jurats in Alderney are precisely on the same footing as the Jurats of the Royal Court of Guernsey; but I am not sure about the officers of Sark.

4867. The *Procureur.* The only thing I find on the point is this: that in 1676, the 6th August, by an Ordinance of the Court itself, "Seneschal sermenté avec le même pouvoir et emoluments qu'avoient les naguères Juge et Jurés."

4868. Then there were a Judge and Jurats at Sark?—Yes, for a short time.

4869. Is the Seneschal an old officer?—Yes.

4870. Mr. *MacCulloch.* There is a good deal of confusion about it. Perhaps it will be proper to explain that the island of Sark was totally uninhabited. It was granted in the reign of Queen Elizabeth by letters patent to Hilary de Carteret, Lord of St. Ouen in Jersey, to hold it by the twentieth part of a Knight's service. The tenants were more or less assimilated to St. Ouen in their tenure of land; and so on. The whole is set forth in the letters patent. It would appear that Hilary de Carteret brought over to Sark from Jersey a number of his tenants who settled in the Island. It appears that, soon after that, in 1582, the inhabitants of Sark elected from among themselves a Bailiff and six Jurats. The matter, in some way, got before the Royal Court of Guernsey, I cannot tell how: but there are documents which will show it all. There was a long discussion about it; and finally the act of the inhabitants was disallowed. The Court deciding they had no right to do so. After that, I find, in 1583, April 24th, five Jurats were established, the Seigneur to act as Judge. After this, comes the appointment of the Seneschal in the room of the Judge and Jurats.

4871. The *Procureur.* There is also a Vingtenier.

4872. You have no officers called Vingteniers have you in this Island?—We have; but they are exclusively confined to militia affairs at present.

4873. Mr. *Le Retilley.* We had those officers: but they have been dropped for more than a century.

4874. (To the *Procureur.*) As to Herm and Jethou, they are in fact part of Guernsey, are they not?—Yes.

4875. Are there any constables in them?—There was one term in which a number of persons were appointed; but there are none at present. There is a little place which is an Island at high water, called Lihou, which is a part of the parish of St. Pierre du Bois.

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*Robert MacCulloch,* Esq., further examined.

Robert Mac Culloch, Esq.

4876. There is a proceeding here called Cause en adjonction, is there not?—Yes.

4877. Will you explain to us the nature of it?—It is a mixed proceeding, the object being to obtain damages on the part of an individual, and, at the same time, to cause the offending party to be condemned to pay a fine to the Crown.

4878. Will you state the particular offences to which it applies?—To cases of libel, slander, and assault and battery.

4879. Is there a distinction, in your law, between libel and slander, the one being applied to written slander, and the other to spoken slander?—Yes; we use the word libel when slander has been put down in writing and published.

4880. What is your term for spoken slander?—Calomnie, diffamation, injure.

4881. The word that would answer to slander would be *diffamation,* would not it?—Yes.

4882. In what mode are proceedings en adjonction commenced?—The first step is a summons served on the party complained of. The form of the action is as follows. "A. B." (Plaintiff) "adjourné, instance de C. D." (Defendant) "à ouir sa plainte et déclaration, d'avoir eté, le dit A. B., grièvement injurié, calomnié & diffamé, &c. &c. (as the case may be);" "le dit C. D. ayant," [done or said so and so] "et le voir obtenir l'adjonction des officiers de la Reine pour en avoir réparation condigne avec dépens."

4883. In a case en adjonction for libel, is there any difference from a case for defamation?—No; they are the same. In the case of an atrocious libel against public functionaries, the Court would authorize a proceeding au Criminel Ordinaire, on the part of the Crown lawyers, the same as a proceeding for theft or any offence of that kind.

4884. In other cases is it, not a criminal but, a civil remedy?—Yes.

4885. Could not a common libel be proceeded on in a purely criminal shape?—I conceive it might: but I do not think the Court would authorize it, except in a very aggravated case.

4886. You think the Court would not sanction a purely criminal proceeding, unless the libel were of a very aggravated character indeed?—Yes; or unless it were on an officer of the Court.

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4887. Suppose it were an attack on an officer of the Court, in his private character: do you think the Court would sanction a proceeding purely criminal?—I think it would.

4888. On account of the dignity of the person injured?—Yes.

4889. The first proceeding is by summons. What follows upon that?—The cause, as we technically call it, is read by the Greffier in the usual course: and, if the party served with a summons appears at Court on the particular day, the most common proceeding is that the witnesses are ordered to be heard; and the Acte states, "sont les dites parties appointées prévenues respectivement; et est permise au dit A. B. adjonction des officiers de la Reine." If the defendant should not appear, a défaut is taken against him, of which a record is made; and the adjonction des officiers de la Reine is permitted.

4890. If the party does not appear, and an adjonction is ordered, what steps are taken?—Another summons is sent, which differs from the former one, inasmuch as, after the words "à l'instance de A. B." (the Plaintiff), the words "et officiers de la Reine joints" are added.

4891. Is this a mere summons, or does it authorize the seizing of the party?—It is a mere summons.

4892. Can a party issue this process of a cause en adjonction without the permission of the Procureur de la Reine?—That subject has been very much discussed. I can state what the difficulty is. The Crown lawyers have considered it their privilege to send the first summons; and no individual member of the bar could do so, without their sanction.

4893. The *Procureur*. That was the case formerly.

4894. (To Mr. *MacCulloch*.) In ordinary actions, is the summons issued by the advocate employed in the cause?—Always.

4895. Was the right of the Crown lawyers to issue the first summons contested on the part of the other Advocates of the Court?—Yes.

4896. What was the result of the contest?—That was connected with a dispute upon another point. The Crown lawyers claimed the exclusive right of pleading, one for the plaintiff and the other for the defendant, in all adjonction cases. This involved the right of sending the summonses. In the year 1809, a petition was presented to his then Majesty in Council by the then Advocates, in which they complained of the right claimed by His Majesty's Procureur and Contrôle in the said Island to plead, the one for the plaintiff and the other for the defendant, in actions for slander, libel, battery and suits touching the disturbance of real possessions, to the exclusion of the Advocates of the Royal Court. The petition appears to have been referred to the Royal Court for their answer, and also to the Crown lawyers.

4897. To give the Crown lawyers an opportunity of being heard upon the matter?—Yes, before the Privy Council. The Order states: The Lords of the Committee, in obedience to His Majesty's said order, have taken the said petition into consideration, and also the answer of the Royal Court of the said Island, and the answer of His Majesty's Crown lawyers to the said petition, whereupon it was ordered, by His Majesty in Council, that it be referred to the said Royal Court to decide upon the matter in controversy between the said Crown lawyers and the Advocates of the Royal Court.

4898. *The Order in Council was put in, and is as follows.*

At the Council Chamber, Whitehall, the 6th July, 1809.

By the Right Honourable the Lords of the Committee of Council for the affairs of Guernsey and Jersey,

His Majesty having been pleased to refer unto this Committee the humble petition of Peter le Cocq and John Jeremie the younger, Advocates of the Royal Court of the Island of Guernsey, upon the subject of a question at issue between the Crown lawyers and the Advocates of the said Royal Court, touching the right claimed by His Majesty's Procurator and Comptroller, in the said Island, to plead, one for the plaintiff and the other for the defendant, in actions for slander, libel, battery and in suits touching the disturbance of real possessions, to the exclusion of the Advocates of the Royal Court, and praying relief: The Lords of the Committee, in obedience to His Majesty's said order of reference, have taken the said petition into consideration, and also the answer of the Royal Court of the said Island, and the answer of His Majesty's said Crown lawyers to the said petition, and are thereupon pleased to order that it be referred to the Royal Court of the said Island of Guernsey to decide upon the matter in controversy between the said Crown lawyers and the Advocates of the Royal Court.

4899. Did the Royal Court come then to a decision?—Yes; I find here an argument on the subject, in writing, which is without date, but which appears to have been about that time; I presume 1809 or 1810. It appears to have been written by Mr. Jeremie, the father of the late Sir John Jeremie and of Mr. Advocate Jeremie: in it there are several authorities referred to upon the question. Upon the 9th of December, 1819, the Cour Ordinaire rejected the claim of the Advocates, and confirmed the previous practice. From this decision there was an appeal, on the part of the Advocates, to the full Court, aux jugements, as we call it: and, on the 13th of November, 1821, the previous decision of the Royal Court was confirmed, and the right claimed by the Procureur and the Contrôle of pleading, the one for the plaintiff and the other for the defendant, was established, with this modification: "La Cour, après avoir oui les parties et leurs avocats à longue et mûre delibération en tout ce qu'ils ont voulu dire et alléguer pour le mérite de la cause, a par jugement confirmé la dite sentence et le droit clamé par les dits Procureur et Contrôle du Roi, de plaider, l'un pour le plaintif et l'autre pour le défendeur, dans les dites causes, en y ajoutant la modification suivante: qu'il sera loisible à chacune des parties d'employer, de plus, un des avocats de la Cour Royale pour plaider pour elle, tant sur le fond que sur toute question préliminaire, lorsque elle le jugera à propos, et lequel avocat de l'une et de l'autre des parties parlera avant les deux Officiers du Roi."

4900. With us the leader opens the cause, and the other counsel act with him; that is not the case here?—That practice does not prevail here. I conceive that the Crown lawyer would always be considered the leader.

4901. A question for instance might arise between two counsel, whether it was advisable to call a particular witness: how would that be decided?—It is very difficult to say which opinion would prevail. The question as to sending the first summons is not decided. The sentence confirms the right of the Crown lawyers to act, but says that the parties may have, besides, the assistance of an advocate; even since the decision, I have known the Crown lawyers claim the exclusive right of serving the first summons. In the case of Sir William Collings, in the action brought by him against the Lieutenant Governor, the summons had been sent by one of the Advocates; and the then Bailiff questioned his right to do so; or rather it would be more accurate to say that he questioned his right to put the cause as we call it.

4902. The summons had been there sent by an advocate and not by the Procureur?—Yes; the question was not adjudicated on, because the Crown lawyers said they did not claim the right in that particular case.

4903. In that case the Crown Officers had refused to send the first summons, had not they?—Yes.

4904. In what year was that?—About a year and a half ago. In 1845, I think.

4905. Was it before the present Bailiff?—No; it was while Mr. Guille was Bailiff.

4906. Is this question as to the right of the Crown officers to withhold a summons still undecided?—I conceive it to be so. I am aware that differences of opinion will be found upon this particular point: I only state my own opinion.

4907. Will you proceed in stating the nature of the proceeding in a cause en adjonction?—Before the adjonction des officiers de la Reine is allowed by the Court, the defendant may be desirous of raising some point of law in the nature of a demurrer; he may say, for instance, that the words are not actionable. I conceive he may get that objection argued by any of the Advocates; he is not bound to go to either of the Crown lawyers for that purpose. If his objection were found good, the act of the Court would state that the action was rejettée.

4908. The proceedings would be commenced by the Crown officers as a cause en adjonction?—Yes.

4909. Then the party summoned would be able to take the objection which you state, namely, that the subject matter of complaint does not fall within the class of cases to which a cause en adjonction is applicable?—Yes.

4910. It would follow, would not it, that he would have a right to employ whom he liked; there is no adjonction, is there, at that time?—No: that question has been raised; I have heard it raised repeatedly, before the judgment of 1821. Supposing the adjonction to be permitted, and the witnesses to be heard, they would then be heard, very much, as in a civil case; they would be summoned in Court and examined *vivâ voce*, in the same way as in a civil case, or in a criminal procès à l'ordinaire; one of the Crown lawyers pleading for the plaintiff and the other for the defendant, and perhaps an advocate on each side, or only on one side, according to the wishes of the parties. I will put this case: supposing the plaintiff to have one Crown lawyer for him and no advocate, and the defendant to have an advocate, besides one of the Crown lawyers; the advocate who is retained for the defence is bound to speak first. I ought to explain, perhaps, in what way we manage our civil cases. The practice is this: the counsel for the plaintiff states his case: he is then answered by the counsel for the defendant, the witnesses having previously been sworn; then all the witnesses on both sides are heard; after which the counsel for the plaintiff, and again the counsel for the defendant, address the Court. In adjonction cases the course would generally be this: either the Crown lawyer or the advocate retained for the plaintiff would begin by stating the case generally, rather concisely; he would be replied to by either the Crown lawyer or the advocate retained for the defendant. The witnesses on both sides would then be examined; and, supposing the case which I put, of the plaintiff having retained no advocate besides his Crown lawyer, the man to begin commenting upon the evidence would be the defendant's advocate.

4911. So that the rule that the advocate de la partie parlera avant les deux officiers de la Reine affects what follows the hearing of the evidence?—It affects that principally, not exclusively.

4912. The defendant would be heard twice in point of fact?—Yes: or, in the converse case, the plaintiff would be heard twice and the defendant only once. The defendant has always the last word in a cause en adjonction, but by the mouth of the Crown lawyers, not by the mouth of the advocate.

4913. Mr. *Jeremie.* It is right to say that that judgment was a sort of compromise between the Crown lawyers and the Advocates: and the fact of its being a compromise may give a reason for the interpretation which we put upon it.

4914. The Court might know what was really meant though it was so worded?—Yes. In this Court advocates generally think it a very great advantage to speak last: and in that compromise you see the Crown officers, who generally get the better in all the struggles, wished to speak last.

4915. Mr. *Mac Culloch.* The reason appears to result from the system, the want of a proper brief. A man who opens a case, in a question of fact, is always very uncertain what he shall be able to prove.

4916. Mr. *Jeremie.* It is often very difficult to decide who is to begin.

4917. (To Mr. *Mac Culloch.*) Can a party commencing a cause en adjonction, at any stage of the proceeding, withdraw from it?—I conceive he may. In practice, if the case is abandoned, it is generally done by ceasing to proceed.

4918. Can the civil party, as opposed to the penal party who is the Crown officer, throw the thing up of his own accord?—Decidedly.

4919. You think the plaintiff may stay the proceedings at any stage?—Yes.

4920. What should you call that?—We have no technical term for it. If he does not proceed for a certain time the thing dies a natural death.

4921. Can the Crown officers abandon it without the consent of the civil party?—I should say not.

4922. Do those actions carry costs?—Yes; they do. If damages are given by the Court, in a case of adjonction, a certain sum would be adjudged to the plaintiff, and a trifling fine to the Crown.

4923. The substantial amount is to the plaintiff?—Yes; the amount given to the Crown is merely nominal; it seldom exceeds three livres tournois, though I have known larger sums given; I think it often might be thirty livres tournois.

4924. Will you mention some sum which you should consider unusually large damages for the party to receive?—I do not at this moment recollect a larger sum than three hundred livres tournois, which would be about twenty one pounds. I think there are very few beyond one hundred livres tournois, or little more than seven pounds.

4925. With costs?—Yes.

4926. If a party fails is he liable to costs?—Yes. Upon this point I should state that, formerly, not within my recollection at all, I have met with acts of court in which the plaintiff was adjudged to pay a fine to the Crown. I conceive that was one of the reasons for which, originally, the Crown lawyer was adjoined to the defendant. The proceedings in cases of Clameur de Haro and Nouvelle dessaisine are very nearly similar. I should say there is no substantial distinction, with this exception, that a preliminary examination generally takes place before two of the Jurats as commis de la Cour.

4927. Those are both modes of proceeding for trespasses on real property?—Yes.

4928. And have taken a criminal form, probably on the ground that some violence is presumed?—Yes.

4929. Has every other criminal character now entirely disappeared?—Yes. I may state that those cases of Clameur de Haro and Nouvelle dessaisine are generally decided by the Court on the spot: they go and view the place.

4930. Is the preliminary examination before the two Jurats, as the commis of the Court, to view the place?—Yes; and to set down in writing the pretensions of the parties respectively. In the case of a Clameur de Haro, the party who is found to be in the wrong is condemned to a trifling fine, and a "regarde au château," which, in former times, was a night's imprisonment. If the plaintiff does not carry on his cause actively, in all these cases, the defendant may bring it into Court himself, and compel him to go on.

4931. Is not that so in other actions?—In all civil actions; and, I conceive, au Grand Criminel the same right would exist; but that would generally be done by motion. The counsel for the prisoner would come to Court, and say "The Crown lawyers are not going on;" and the Court would say "Go on;" but there would be no action entered: while, in those other cases, there would be an action entered by the defendant.

4932. Then the defendant would become the plaintiff in point of fact?—He would in point of form; though still, upon the case coming on to be tried, the plaintiff would be bound to begin and call his witnesses first. I wish to call the Commissioners' attention to a particular passage of Terrien, which would seem to show what the former practice was. It is Book XII., Chapter xxix., page 506. "Il faut icy présupposer que de tout crime, soit public ou privé, competent deux actions. L'une est criminelle dont la fin tend au profit du fisque et à l'interest public. L'autre est ciuile, qui est appelée mixte, pour ce que combien qu'elle descende de crime, toutesfois elle est intentée à fin civile tant seulement, et pour l'intérest de la partie privée. *Namque alterum utilitas privatorum alterum vigor publicæ disciplinæ postulat.* Car és délicts resulte la vengeance, sçavoir, est la peine quant au fisque, et la réparation du tort et dommage envers la partie privée. Et pourtant l'accusé peut estre condamné civilement et criminellement au regard des deux, à sçavoir est du privé et du fisque. Et comme, en matière criminelle, on adjuge intérest civil à la partie lesée, aussi, on peut infliger à l'accusé amende ou peine pécuniare à appliquer au fisque. Et y a aussi bien vengeance aux biens comme au corps et à la rénommée. Mais, toutesfois, la cause proprement est dite criminelle, quand la fin tend à la vengeance publique, pour faire punir le délict de la peine deuë et naturelle: mais si on tend à imposer moindre peine, combien qu'elle tourne au bien public et non au profit particulier de la partie, l'action n'est dite que civile. L'exemple peut estre donné, d'un clerc, qui, en cas de crime, est puny civilement par le Juge Royal, quand il est mis en amende envers le Roy pour le cas privilegié. Et, generalement la matière n'est point dite criminelle, criminellement intentée, sinon quand la fin d'icelle tend à peine afflictive de corps. Or, comme il y a deux actions descendantes des crimes, aussi y a il deux manières de accusateurs. L'un est le publique, c'est à sçavoir le Procureur du Roy, qui poursuit l'intérest du Roy et de la chose publique: et autre que luy ne le peut faire. L'autre accusateur est privé qui est la partie offensée, ou son plus prochain héritier. L'un tend à punition corporelle, amende honorable, ou pécuniaire envers le Roy, contre le délinquant, selon l'exigence du cas. L'autre demande réparation de son intérest civil, qu'il a souffert à cause du délict commis en sa personne ou en ses biens. Et sont le plus souvent les deux joints ensemble. Car, par le benefice du Procureur du Roy la partie civile parvient à ses fins. Et s'il n'y a partie civile, le Procureur du Roy poursuit seul le procèz. Ce qu'il fait aucunes fois à la dénonciation secrete, ou instigation d'autruy. Mais en ce cas, si le défendeur est absous, il peut avoir son recours de despens dommages et interests contre l'instigateur." Formerly we have traces of there being a partie civile in a case which we should now consider to be a criminal case.

4933. The *Procureur*. In the case of Mr. De Courcy, I produced a number of cases where the Crown lawyers had actioned the defendant, both being adjoined to the plaintiff. There are

a great many proceedings, in ancient times, in which the civil party alone sued for damages, in which there is no record of the Crown lawyers being adjoined to them; they appeared to be purely civil. I may state, in reference to the passage from the 29th Chapter of the 12th Book of Terrien, that it is contained in the Approbation des Loix as approuvé.

4934. Mr. *MacCulloch.* My objection to the adjonction, independently of that which has been stated, is that the civil party is bound to put himself under the direction of the Crown lawyers, in a matter which affects himself personally.

4935. (To Mr. *MacCulloch.*) Are those causes heard on the days for civil causes or criminal?—Criminal. There must be the Bailiff and at least seven Jurats present; and there is no appeal. They are generally called proceedings "au Petit Criminel." Cases of Nouvelle dessaisine and of Clameur de Haro, and proceedings for the levying of fines, are also called proceedings au Petit Criminel. One of the objections to the cause en adjonction is that the plaintiff may find himself hampered by neither of the Crown lawyers choosing to proceed in the matter.

4936. That is, supposing they had power to withhold the summons?—Yes. Another very serious objection is that the defendant should be compelled to retain one of the Crown lawyers. If he wishes any other advocate he must pay for two. He may have a person whom he may not like; or it may happen that one of the Crown lawyers is very superior to the other. The plaintiff has the choice of the two; he goes to which he likes; and the defendant is bound to take the one whom the plaintiff does not choose to employ. It may happen that he may be, comparatively speaking, inefficient.

4937. Do you also think it objectionable that, where the public has no interest, the civil party has not the means of withdrawing in a case en adjonction?—Yes; I think the civil remedy ought to be perfectly distinct from the other; and the one ought not to prejudice the other in any way. Supposing a party, who is assaulted in the street, makes a complaint through the constable, which is disposed of summarily by the Cour Ordinaire, as a police case: if the party complained of is in any way punished, the civil party, the party aggrieved, has no right to bring an action en adjonction. I consider that in all those cases there ought to be a purely civil remedy, in the nature of an action for damages.

4938. Would you exclude the right of the public prosecutors to institute proceedings?—No; I should let them proceed as they pleased. I should see no objection to this: if, in the course of a proceeding of this nature by the party aggrieved, the Crown lawyers considered the interests of society involved, that they should come in and pray for an infliction of a fine on the party who might be found in the wrong, either plaintiff or defendant.

4939. Why should not they have a perfectly distinct proceeding without coming into the Civil Court at all? Suppose there were a libel on a man, which contained, besides a gross reflection upon his character, a great deal of obscenity, or a challenge to fight, both of which last would be public nuisances, why should the injury which the party suffered from this abuse exclude or be excluded by the right of the public to say we will not suffer our comfort to be disturbed?—That is my view. But some cases may, and do in practice, occur, in which the first knowledge which the Crown lawyers have of a circumstance of the sort is not obtained by them until the action is brought. I know of no instance in this Island, within my practice, in which a civil action has been brought by a party robbed to obtain a restitution of the goods, for example. But the civil interest of the party ought to be protected; and he ought to have some remedy against the evil-doer. In cases of robbery, if the goods have been discovered, the practice is to give them up to the proprietor after the trial is over.

4940. (To the *Procureur.*) Do you wish to qualify what has been said by Mr. Mac Culloch?—I do not agree with Mr. MacCulloch in saying that the first summons must be had from the Crown lawyers. I was one who opposed the Crown lawyers originally: and, even then, I was of opinion, and have always been, that, as the first summons prays to be allowed l'adjonction des officiers de la Reine, the first summons might be sent by any advocate; but I know that, in practice, it has been claimed by the Crown officers. It was so formerly, but not now.

4941. (To the *Procureur.*) In the late proceeding, in Sir William Collings's case, no point was actually decided; the adjonction did not go finally, did it?—No. The officers of the Crown refused to be parties to the proceedings, on three grounds. First, because, as officers of the Crown, they could not proceed against the Governor. Secondly, because the Governor was not amenable to the Court. And, thirdly, because there was a distinct order from the Government at home not to proceed.

4942. Was either of the three grounds on which that case depended finally decided?—No; I believe not. I would merely add that, on the point of the Lieutenant Governor not being amenable to the Court, the Crown lawyers relied in a great measure on a decision of the 1st of December, 1783.

4943. The Court refused the adjonction, did not they, in that case, in order that application might be made to the Queen in council?—Precisely.

4944. Of course, the Court, and the Bar, and the Governor, and every body, would be very glad to have those points definitively settled one way or the other?—I have no doubt they would.

4945. Mr. *Andros.* With respect to the third point, the Procureur refused to proceed, and wrote to the Government, stating what he had done, and received a letter from the Government approving of it.

4946. The *Procureur.* The order to me was to persist in my refusal.

4947. In the language of the judgment, it was assumed, was not it, that there was a distinct order?

4948. Mr. *Andros.* It was assumed that the Court could do no more; and it was stated that Sir William Collings was left to take his remedy as he could.

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4950. The Court was obliged to refuse the adjonction because the Crown officers would not adjoin ?—Just so.

4951. The *Procureur.* The decision is on the 1st of March, 1845.

4952. (To Mr. *Le Febvre,* Greffier.) Will you produce the entries in the case of Sir William Collings?

*The same were delivered in, and are as follow.*

Samedi, le premier Février, mil huit-cent quarante-cinq, devant Monsieur le Baillif, présens Jean Le Marchant, T. W. Gosselin, Thomas Le Retilley, Harry Dobrée, T. F. De Havilland, Thomas Andros et Edgar MacCulloch, Ecuyers, Jurés.

William Francis Patrick Napier, Ec^r^., C.B., Major Général dans l'Armée Britannique, versus Messire William Collings, Chevalier, à ouir sa plainte et déclaration d'avoir été, le dit William Collings, grièvement insulté, injurié, calomnié, diffamé et libellé par le dit William Francis Patrick Napier, le trente Mars, mil huit-cent quarante-quatre, ou environ, le dit William Francis Patrick Napier ayant écrit et envoyé au dit William Collings, le dit jour, trente Mars, mil huit-cent quarante-quatre, ou environ, une lettre dont suit copie. 30th March, 1844. Sir, Major Brainbrigge has informed me that you refuse to contradict the infamous and false charge which has appeared in the Gazette of the 16th, as part of your speech, and which I have pointed out to you. You promised you would contradict it; you now refuse; you have, therefore, forfeited your word as a gentleman; and I am entitled to hold you responsible, as having made use of the language attributed to you in the Gazette. This, sir, is a foul charge, which you have dared to utter, as a Judge on the bench, against me, Her Majesty's representative. My position prevents me from exacting from you that reparation which I would instantly have done if I had been in a private capacity. I shall, therefore, call upon the Secretary of State to enforce the reparation due to me, in my public capacity, for this false and infamous charge. Meanwhile, leaving you with the dishonour of having added to that false charge the breach of your word as a gentleman,—I remain, sir,

Sir W. Collings, K^t^. W. Napier, L^t^.-Govn^r^.

La dite lettre étant fausse et calomnieuse, tendant à avilir et déshonorer le dit William Collings, tant comme particulier qu'en sa qualité de Juré Justicier de la Cour Royale de cette Ile, le tout contre son honneur, crédit et réputation, et à son grand préjudice et dommage, et sans aucune provocation de sa part. Et est permise au dit William Collings l'adjonction des Officiers de la Reine pour en avoir réparation condigne avec dépens.

L'avant dit jour, premier Mars, mil huit-cent quarante-cinq, devant Mons^r^. le Baillif, présens, Jean Le Marchant, Thomas Le Retilley, Harry Dobrée, Thomas F. de Havilland, Thomas Andros, et Edgar MacCulloch, Ecuyers, Jurés.

Messire William Collings, Chevalier, s'étant, aujourdhui, plaint à la Cour d'un déni de justice de la part de Charles De Jersey, Ec^r^., Procureur de Sa Majesté, et aussi de la part de Jean Thomas De Saumarez, Ec^r^., Contrôle de Sa Majesté; en ce que les dits Officiers de la Reine lui ont, l'un et l'autre, refusé leur adjonction lorsque requis de la lui prêter dans une cause qu'il a intentée contre W^m^. Francis Patrick Napier, Ec^r^., C.B., Major Général dans l'Armée Britannique, pour obtenir réparation condigne d'une injure calomnieuse à lui faite dans une lettre qui lui fut addressée par le dit Major Général Napier en date du 30 Mars, 1844, laquelle adjonction fut permise par cette Cour, sur l'action du dit Messire W^m^. Collings et par le défaut du dit Major Général Napier, par Acte en date du 1^e^ Fev^r^. 1845, à quoi recours: La Cour, après avoir entendu tant le dit Messire William Collings par son Conseil, que les dits Officiers de la Reine, lesquels ont, l'un et l'autre, déclaré refuser leur adjonction, dans la dite cause, d'autant que le dit Major Général Napier est Lieutenant Gouverneur de cette Ile, appuyant leur refus par diverses raisons de droit et de fait, et, en outre, alléguant avoir reçu un ordre péremptoire du Gouvernement de Sa Majesté, le 20 Fev^r^. 1845, de ne prêter leur ministère au dit Messire William Collings, dans la dite cause; considérant qu'il a été, jusqu'ici, de droit strict que les Officiers de la Reine fussent parties adjoints, l'un à l'acteur et l'autre au défendeur, dans toutes poursuites en adjonction pour réparation d'injures; que le défendeur, en pareilles causes, ne peut être sommé à paraître en justice que par le moyen d'un ajour revêtu de l'autorité et portant la signature de celui des dits Officiers de la Reine qui est adjoint à l'acteur; et qu'un jugement ne peut être donné, en pareilles causes, qu'après avoir entendu les conclusions des Officiers de la Reine: A jugé qu'elle ne peut, dans les circonstances actuelles, procéder outre dans la dite cause, et est sans préjudice au droit du dit Messire W^m^. Collings de se plaindre à l'autorité supérieure du dit refus des dits Officiers de la Reine, ou de demander par autre voie réparation de l'injure qu'il allégue lui avoir été faite par le dit Major Général Napier.

Et se réserve cette Cour de faire telles humbles répresentations qu'elle jugera convenable à Sa Majesté en Conseil, tant sur les circonstances relevant de cette cause, que sur la pratique jusqu' ici suivie quant à l'adjonction des Officiers de la Reine dans des actions pour réparation d'injures.

4953. Mr. *Lefebvre* (Greffier). In compliance with the wish of the Commissioners, I have to hand in two cases in which several offences were included in the same act of accusation.

*The same were delivered in and are as follows.*

Samedi, le douze Novembre, mil huit-cent vingt-cinq, devant Monsieur Le Bailiff, présens, Jean La Serre, Josias Le Marchant, Jean De Lisle, Jean Guille, James Carey, Jean Le Messurier, Jean Hubert, Pierre Le Cocq, et William Collings, Ecuyers, Jurés.

Francois D'Auvergne, fils de Jean, natif de Jersey, prisonnier dans la prison publique, amerci envers les officiers du Roi, et est, après preuve d'être, le dit François d'Auvergne, félonieusement revenu en cette Ile avant l'expiration des six ans pour lequel terme il fut banni hors de ce Baillage par acte de la Cour Royale, en date du 23me Octobre, 1824, et avoir félonieusement, la nuit du 5me au 6me Août, 1825, ou environ, soit seul ou avec autre son complice ou autres ses complices, forcé et rompu une fenêtre d'une maison occupée par le Sieur Robert Vallack, proche le lieu où se tient la Foire, en la paroisse du Catel, et s'y être introduit et avoir pris, volé et emporté une montre d'argent appartenant au dit Vallack hors d'une chambre dans la dite maison, et avoir, le 6me du dit mois d'Août, ou environ, pris, volé et emporté hors d'une maison appartenant au Sieur Nicholas Tardif à la rue Maze,

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en la paroisse de St. Martin, hors d'un tiroir d'une armoire ou "*chest*," qui étoit dans la cuisine de la dite maison, quatre cuillers à thè d'argent, et, hors d'un tiroir d'une armoire ou "*chest*", qui étoit dans une chambre de la dite maison, une chemise de toile et une tasse d'argent, et, d'un autre tiroir de la dite armoire ou "*chest*," neuf à dix livres sterlin ou environ, consistant, principalement, en pièces argent François, passant en cette Ile pour deux chelins quatre pennis, les dits articles appartenant au dit Nicholas Tardif, excepté la chemise, qui appartenoit au S$^{r}$ Nicholas Tardif, son fils, et avoir de plus pris volé et emporté, dans l'après midi du 30me Juillet, 1825, ou environ, hors d'une cuisine, occupée par Judith Du Frocq, dans une maison appartenant à Monsieur Jean De Quetteville, située à St. Jaques, dans la paroisse de St. Pierre Port, une montre d'argent appartenant à la dite du Frocq ; et leur payer leurs dépens, au fins d'Acte du 15me Octobre, 1825 : Condamné à recevoir aujourd'hui, ou tel autre jour que la Cour ordonnera, cent coups de fouet par les mains de l'Exécuteur des hautres ouvres, et est de plus banni à perpétuité hors de ce Baillage, avec défense d'y revenir à peine d'être pendu et étranglé jusqu' à ce que mort s'en ensuive, et tous ses biens meubles et héritages, si aucunes a, confisqués et acquits à sa Majesté, ou au seigneur du fief à qui droit aura, après les frais du procés pris sur iceux ; et ce, après avoir entendu lecture de la déposition des témoins des dits officiers du Roi prise à futur et redigée par ecrit.

4954. Sur l'action des officiers du Roi contre Jean Sarre, fils de Pierre, de l'Ile d'Auregny, prisonnier dans la prison publique, à soutenir leur preuve en la cause qu'ils ont contre lui ; à se voir adjuger à telle peine punition ou châtiment corporel que la Cour trouvera condigne, pour avoir, le dit Sarre, soit seul ou avec autre son complice ou autres ses complices, dans le courant des mois de Mai, Juin, Juillet et Août, 1827, ou environ, commis divers vols dans la dite Ile d'Auregny, et notamment avoir, dans le mois de Mai, 1827, cassé un carreau de vitre d'une fenêtre du galetas d'une maison, où le Sieur Jaques Ollivier demeure, située à la Grande Rue de la ville de la dite Ile d'Auregny, et, s'étant introduit dans le dit galetas, avoir forcé et rompu une armoire qui était dans une chambre de la dite maison, et avoir pris, volé et emporté différentes pièces de monnoies d'or francaises, ayant cours en la dite Ile appelées pièces de vingt francs, qui étaient dans la dite armoire, appartenant au dit Jaques Ollivier : Item s'être, vers la fin de Juin, ou commencement de Juillet, 1827, ou environ, introduit dans un appartement de la maison appartenant au Sieur Nicolas Gaudion, et située à la Grande Rue de la ville de la dite Ile d'Auregny, et avoir forcé et brisé une petite boite, qui était dans le dit appartement, et avoir pris, volé et emporté au montant de trente à trente cinq chelins, ou environ, en monnoie d'argent, ayant cours en la dite Ile d'Auregny, ou partie de la dite somme, qui était dans la dite boite, appartenant au Sieur Nicolas Gaudion, Junieur : Item, avoir, le 19 Août, 1827, ou environ, cassé un carreau de verre d'une fenêtre du galetas de derrière d'une maison, appartenant au Sieur W$^{m}$. Herivel, située à la Grande Rue de la dite ville de la dite Ile d'Auregny, et s'étant introduit dans la dite maison, avoir forcé et rompu la coverture d'un Anglicè "*Desk*," qui était dans une des chambres de la dite maison, et avoir pris, volé et emporté une livre sterlin ou environ en monnoie d'argent ayant cours en la dite Ile, en pièces, partie de deux chelins quatre pennis, partie de dix pennis, et partie de cinq pennis, le tout appartenant au dit Herrivel, et ce à l'infraction des loix, trouble de l'ordre public, et leur payer leurs dépens, aux fins d'acte du 20 Octobre, 1827. Est le dit Sarre amerci envers les dits officiers du Roi, et est condamné à un mois d'emprisonnement solitaire dans la prison publique au pain et à l'eau, et aux fraix. Et ce, après avoir entendu les témoins des dits officiers du Roi.

[Adjourned.]

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At the Court House in Alderney.

*Friday, October 2nd*, 1846.

John Gaudion, Esq., Judge of the Court at Alderney.
October 2nd, 1846.

*John Gaudion*, Esq., Judge of the Court at Alderney, examined.

4955. You are the Judge of this Island?—I am.

4956. Will you favour the Commissioners with the names of the officers of the Court?—Mr. Thomas Nicolas Barbenson is the Procureur de la Reine.

4957. Is there any Contrôle here?—The office is vacant, at present.

4958. What are the names of the Gentlemen of the Bench?—Mr. Nicolas Barbenson, Mr. William Joseph Sanford, Mr. John Gauvain, Mr. John Robilliard, Mr. John Mesny, Mr. Lucas Le Cocq.

4959. Is that the full number of Jurats?—Yes.

4960. Have you mentioned them in their order of seniority?—Yes.

4961. What is the name of the gentleman who holds the office of Greffier?—Mr. Frederick Williams. The name of the Serjeant of the Court is John Simon Tourtel ; and of the Prevôt, Thomas Simon.

*The Minutes of Evidence taken at Guernsey, on Thursday, October the first, in reference to the Island of Alderney were read over* (*a*).

4962. Mr. *Barbenson* (Procureur). Three or four years ago there was a yearly Prevôt, as Mr. De Jersey mentions : but, upon a representation made to the States that the Prevôt, being named yearly, did not perform his duty so efficiently as a permanent Prevôt would do, the States took it upon themselves to name a perpetual Prevôt, granting him a salary of, I believe, twenty livres a year currency of the island.

4963. (To Mr. *Barbenson.*) Was that done by the States or by the Court?—It was by the States at a meeting of the Chefs Plaids. We have two Chefs Plaids each year.

4964. At what times of the year?—The first Monday after Michaelmas, and the first Monday after the 15th of January. By an order of the Royal Court of Guernsey they are fixed to two. Before that, I do not know whether there were more than two.

4965. When was that regulation made?—It was by an order of 1711.

4966. When an order, such as you have mentioned in reference to the Prevôt, is made by the Chefs Plaids, does that go any further, or become law at once?—It becomes law at once.

4967. Do you transmit the Ordonnance any where?—No.

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(*a*) See page 183.

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4968. It is final here, is it?—Yes. At the same time, any inhabitants who wish to complain to the Guernsey Court have full power to do so, or any member of the States who may find fault with any of the proceedings.

4969. Do you recognize their power to annul it, in case they disapprove of it?—Yes; the same as Her Majesty in Council has the power to annul any proceedings of the Royal Court.

4970. Who compose the Chefs Plaids?—The Court, which consists of the Judge, six Jurats, and the Queen's officers, and the Douzaine, and also the Governor. At least it is made known to the Governor, that the Chefs Plaids are to be held, on such a day; but no postponement can be made of the Chefs Plaids.

4971. The Governor attends if he pleases?—Yes.

4972. Does he send any one to attend when he does not himself come?—Yes; he does occasionally; a Lieutenant Governor is sworn in for the day. It has been decided by the Royal Court, in 1801, in the case of General East, that the day of meeting of the Chefs Plaids cannot be postponed. He dismissed the assembly; and the States here made a complaint to the Royal Court.

4973. The Chefs Plaids is not a judicial body is it?—No; legislative.

4974. Purely legislative?—Yes.

4975. Have the Queen's officers a vote in it?—They have not; they give their conclusions.

4976. The Procureur attends, does he?—Yes. No meeting of the Court or States can be held without the Procureur, or one of the Queen's officers.

4977. What do you call this Court?—La Cour.

4978. Mr. *Gaudion.* We have been entitled Royal Court, in some cases; but there is no authority for it, I believe.

4979. Mr. *Barbenson* (Procureur). The Prevôté serve twelve years. The senior of them is sworn in as deputy Prevôt in rotation, and acts as such for one year.

4980. By senior do you mean senior in point of years?—Yes; the first that was chosen in the Prevôté.

4981*a*. Do you renew them one by one?—Yes.

4981*b*. In case, therefore, there is no death, any gentleman who is chosen into the Prevôté waits eleven years before he serves?—Yes.

4982. The Prevôté consists of twelve people, does it?—Yes.

4983. How are the constables chosen?—The constables are chosen by the Court. They serve as deputy constables for one year, and then as constables for a year.

4984. There is an election of two each year?—Yes.

4985. Mr. *Gaudion.* The deputy constables serve one year, as such, and become constables at the expiration of the year.

4986. Do you assent to the statement made at Guernsey that the Royal Court have the power of making Ordonnances for Alderney?

4987. Mr. *Barbenson* (Procureur). I should say that the Court has the power of making Ordonnances. It was decided by the Royal Court of Guernsey that the Court of Alderney could make Ordonnances; but those Ordonnances must be sanctioned by the next meeting of the States or Chefs Plaids.

4988. *The following Acte of Court was read.*

" A la Cour de l'Ile d'Auregny, le trente Juin, 1821, devant Monsieur Pierre Gauvain, Juge, présens Messieurs Thomas Le Cocq, Jean Le Ber, Nicholas Barbenson, Thomas N. Robilliard et William J. Sanford, Jurés.

Messieurs Nicolas Barbenson, Thos. N. Robilliard, et William Jos. Sanford, Jurés, Membres composant le Comité appointé le 26 Mai, 1821, pour soutenir les droits de cette Cour devant la Cour Royale de l'Ile de Guernesey, sur la plainte des officiers du Roi de cette Ile contre cette Cour, sous date du 26e Janvier, 1820, ayant produit un Acte de la dite Cour Royale, sous date du 14e Juin, 1821, la Cour, après avoir entendu lecture du dit Acte, et sur ce, ouie la conclusion du Procureur du Roi, a ordonné que le dit Acte soit enregîtré sur les records de cette Ile, duquel Acte la teneur suit, viz.

Guernesey. Le quatorzième Juin, mil huit-cent vingt-un, devant Daniel De Lisle Brock, Ecuier, Baillif de cette Ile de Guernesey, présens Pierre De Jersey, Eléazar Le Marchant, Carteret Priaulx, Jean La Serre, Josias Le Marchant, Jean De Lisle, Jean Guille, Hélier Carré et Jean Hubert, Ecuiers, Jurés de la Cour Royale en la dite Ile.

Avant que faire droit sur la réquête de Messieurs les officiers du Roi de l'Ile d'Auregny, sous date du 26e Janvier, 1820, et les réponses des Etâts et de la Cour d'Auregny en date du 28e Avril, 1820, la Cour Royale, ayant été d'opinion que la Douzaine de l'Ile d'Auregny serait entendue, a ordonné que la dite requête et les dites réponses lui seront transmises, et qu', en attendant une décision définitive, la Cour d'Auregny sera antorisée à faire des Ordonnances provisoires, qui seront en force jusqu'aux prochains Etats, on Chefs Plaids, et pour qu'elles soient alors reproduites, révisées, et, s'il y a lieu, confirmées, par les dits Etats ou Chefs Plaids.

Extrait des Regîtres de la dite Ile de Guernesey,

WILLIAM SOLBÉ SHEPPARD,

*Député Greffier du Roi.*"

4989. What are the limits of the subjects to which such Ordonnances extend?—It depends upon what the Ordonnances are for.

4990. To what subjects do you apply this power?—Making local Ordonnances.

4991. Mr. *Gaudion.* They may be put under the head of police regulations.

4992. Laws to regulate the highways?—Yes; and the Blayes. If there is a crying evil, and the remedy is perceived, it is done in that kind of way; but it does not often occur.

4993. What are the Blayes?—A certain extent of land belonging to the manor, parcelled out.

4994. Do you impose penalties for the breach of such Ordonnances?—Yes; by fine.

4995. To what amount?—It depends upon the gravity of the offence.

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4996. What is the outside?—It generally does not exceed twenty francs, I should say.

4997. Can you make an Ordonnance against drunkenness in the streets?—Yes. The step is never taken, except in the case of some crying evil.

4998. Suppose a man went about breaking windows, could you make an Ordonnance that if any thing of that sort were done it should be punished?

4999. Mr. *Barbenson* (Procureur). No: there would be no occasion for that; he would be brought forward and sent to Guernsey very likely.

5000. In case the person does not pay the fine, what is the result?—We should arrest his property, if he has any.

5001. This Court would do so?—Yes. In Guernsey, often, the fines are so many livres tournois, and so many days imprisonment; which we cannot do here, because we have no right to imprison. I think that often causes a failure of justice. When a man has no property what can you do with him? He is above the law.

5002. You think the inability to inflict that alternative renders you to a certain extent helpless?—It does. I should say, for example, in the Militia Law, in Guernsey, if a man is fined three livres or six livres, if he does not pay, he has so many days' imprisonment. Here we cannot do that. If a boy whose parents are poor is absent from his duty, he is brought before the Court and is convicted to pay; but he never pays.

5003. Mr. *Gaudion.* I cannot agree in that quite. If a person is amenable to a fine, and sentenced to a fine, in consequence of having infringed an Ordonnance of the Court, he is sued and may be put in prison as a debtor.

5004. Mr. *Barbenson.* (Procureur). You cannot put him in prison for a debt, unless it is five pounds.

5005. Mr. *Gaudion.* That is in a case of civil debt. This is in case of a crime; the law will authorize you to put him in prison unless he pays. A person cannot renounce upon a fine.

5006. (To Mr. *Barbenson,* Procureur.) You say, in the case of a debt, you cannot imprison unless it were five pounds. No; five pounds currency. That has been decided by Her Majesty in Council.

5007. (To Mr. *Gaudion.*) You are of opinion that, the moment it becomes a crime, you have the power to imprison in default of payment?—Yes; those who commit breaches against the law. A fine is looked upon as greater than a civil debt; and you cannot renounce, or become bankrupt upon it.

5008. You mean that a bankruptcy does not get rid of it?—Yes.

5009. Have you known any instance of a person being imprisoned for not paying a fine?—I do not know any instance.

5010. Could those fines be recovered before the Cour Royale at Guernsey?—There is no appeal upon an Ordonnance.

5011. Could you not proceed against a person, and summon him to Guernsey for a breach of one of your Ordonnances?—No.

5012. The Guernsey Court, therefore, has no original jurisdiction here, but only in the case of appeal?—That is all.

5013. It was suggested to the Commissioners, at Guernsey, that it would be convenient to give to this Court the power of fining offenders to the extent of fourteen livres tournois, or of imprisoning them for a term not exceeding eight days. What is your opinion in reference to such a suggestion?—I should quite agree with it.

5014. Is that the general feeling of the gentlemen of the Bench?—I should say it is.

5015. Mr. *Barbenson* (Jurat). It is very necessary in my opinion.

5016. Mr. *Barbenson* (Procureur). I think, in some instances, the Court has fined to a higher amount than fourteen livres.

5017. In the case of a distinct Ordonnance?—No; without an Ordonnance. I do not recollect any case.

5018. Mr. *Gaudion.* In this Court, we have no authority to punish for offences; but, on trivial cases which it is necessary to correct occurring in this place, they are brought before the Court. The case is examined into, and the witnesses heard; and, if it is found of a trifling nature that would not bear the expense of sending witnesses to Guernsey, the option is given to the party accused. "You have heard the evidence against you; will you submit to a decision of this Court?" They find they have been in the wrong, and they submit; and the Court deals with them according to the circumstances.

5019. In those cases, you think a distinct power given to this Court, not optional in that way, would be an improvement?—Yes; it might correct abuses.

5020. Is the Contrôle a member of the States?—Yes; the States and the Court of Chefs Plaids are the same thing; the same members compose the two.

5021. Have the Crown officers votes?—No; they give their opinion. The opinion of the Crown officers is first heard, upon any Ordonnance which is proposed. They give their conclusions.

5022. Are the States and the Chefs Plaids different assemblies?

5023. Mr. *Barbenson* (Procureur.) The Chefs Plaids are held twice a-year; and that is not only for passing Ordonnances in Chefs Plaids, but raising taxes for the poor and fixing the wheat rents.

5024. What do you mean by fixing rents?—The value of the wheat rents. There are rents due in the Island, the rate of which is fixed by the Court.

5025. Mr. *Gaudion.* In default of the party paying in kind after a certain time, he must pay in money.

5026. It is how much money is to be equivalent to a specified number of quarters?

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5027. Mr. *Barbenson* (Procureur). Yes. They also vote money for any repairs to be made to the public buildings.

5028. How is all this money raised? By rates?—The poor-rates are. There is also an impôt of one shilling a gallon upon spirituous liquors. That is sanctioned of course by an Order in Council.

5029. Does that go through the Royal Court of Guernsey?—No.

5030. The Chefs Plaids and the States are not the same assembly, are they?—They are composed of the same members. There are things passed in Chefs Plaids, which the States are not authorized to do; though I believe the States have oftentimes levied taxes.

5031. Mr. *Gaudion.* The States and Chefs Plaids are composed of the same members: the only difference is that the Chefs Plaids must be held twice a year on fixed days, and the States meet whenever there is occasion.

5032. Who assembles the States?—Application is made to the Governor. As he resides in Guernsey, I fix the day. If he resided here, I should consult his opinion.

5033. Mr. *Barbenson* (Procureur). The meeting of the States is for special purposes. At the Chefs Plaids any member has a right to bring forward any question he chooses; and, when the business of the day is gone through, or after the Judge has asked any member of the States if they have any proposition to make, then any person present has the right to address the meeting.

5034. There is a Billet d'Ordonnance for the Chefs Plaids is there?

5035. Mr. *Gaudion.* The States and Chefs Plaids, I have said, are composed of the same members. The Chefs Plaids are held on specific days by law. Any member of the States or Chefs Plaids may propose any alteration of an Ordonnance, or anything he may suggest; and then the public are called on by me, if they have any complaint or any remarks to make; whereas, at the States' meeting, it is for a specific object which must be mentioned previously.

5036. Mr. *Barbenson* (Procureur). The Court and the States are summoned by the serjeant to attend on such a day.

5037. Is that the whole nature of the difference between the two; the time of holding, and the nature of the notice necessary to bring business forward?—Yes.

5038. What is the difference between the Douzaine here and at Guernsey?—The Douzaine here are elected by the rate payers similar to the Jurats.

5039. For life?—Yes; or till, through infirmity, they ask to be discharged. It is they who rate the taxes, fixing the proportion which each is to pay: they do so in conjunction with the Crown Officer. The Crown officer, when he is with the Douzaine, is the President of that body. I wish to point out the difference between the Guernsey Douzeniers and ours. They have no legislative power; whereas here the Douzaine forms part of the States in their legislative capacity. The Douzaine have no vote; they are only consulted. First the Crown officers' opinions are asked; after the Crown officers' opinions are asked, I appeal to the President of the Douzaine to ask the opinion of his Douzaine upon the case submitted to them.

5040. The President of the Douzaine would be the Crown officer, would not he?—Not in the States; that is in their separate capacity, as a Douzaine. The opinion of the Douzaine is asked through the President, who is the senior member; and the opinion of the Douzaine is then made known to me; and I take the opinion of the Court: and whatever the decision of the Court is becomes law.

5041. The votes of the Court decide it?—Yes. The Douzaine's opinion carries great weight with the Court on local affairs.

5042. Mr. *Barbenson* (Procureur). I was going to say that the members of the States are twenty one in number; though four Jurats are sufficient to concur in any vote.

5043. How many does the Douzaine consist of?—Twelve; and there are two Crown officers, so that four Jurats may decide anything they please.

5044. (To Mr. *Gaudion*). The Constables have no voice in the States, have they?—No; the Constables with us are merely what may be termed police officers; they have no power.

5045. Mr. *Barbenson* (Procureur). In Guernsey, I believe the Douzaine have so many votes in the States.

5046. When you speak of the public being asked if they have anything to complain of, do you mean the Douzaine?—No; the public who are in the Court. It is an open Court.

5047. They in fact stand in the same position as the Douzaine, except that the Douzaine are expressly asked and the public merely generally?—The public are not asked upon the question which is mooted before the Chefs Plaids at all: it is only, if the inhabitants have anything to represent for the good of the Island, the States would take it into consideration.

5048. Mr. *Barbenson* (Procureur). In the actes of our Chefs Plaids it is said that the Douzaine are there representing the public.

5049. The Douzaine form part of the Chefs Plaids do they?

5050. Mr. *Gaudion.* Yes. Seven are a quorum. There must be a Judge and two Jurats, and seven Douzeniers, at least, to form a quorum with one of the Crown officers.

5051. Mr. *Barbenson* (Procureur). In the case of a mere quorum, of course, the Judge and one Jurat might decide anything. That, I think, is a great fault in our constitution. I do not mean to say, supposing the whole of the Douzaine and the Queen's officers were of one opinion, the whole Court would go against them; but, I think, the Queen's officers and the Douzaine ought to have some vote in the States.

5052. If the Douzaine had a voice, of course, the Douzeniers would outnumber the Jurats?—The Douzeniers would not ask a thing of that kind.

5053. You would propose that there should be some one to vote on the part of the Douzaine?—It is not that I wish to take any power from the Court; but, having something to

do with the Douzaine, and being a member of the States, it appears right that we should have some vote. In Guernsey, the Queen's Procureur has a vote, and the Contrôle has a right to speak, as Crown officer.

5054. (To Mr. *Gaudion.*) In the States or Chefs Plaids, do you always vote, or do you wait till there is a balance?—Unless there is a balance, I have no vote.

5055. Do you agree in the opinion which has been expressed, that Ordonnances passed in Guernsey are binding in Alderney?—It has only been Ordonnances respecting Fast days, or anything for a general purpose: otherwise the Guernsey Court has no power to legislate for us.

5056. Mr. *Barbenson* (Jurat). I have seen many Ordonnances come from the Royal Court; and we have been obliged to register them.

5057. Mr. *Gaudion.* I hope they will not attempt it, while I sit here.

5058. (To Mr. *Gaudion.*) What Ordonnances should you consider to come within your expression of Ordonnances for a general purpose?—There was a law made in 1812, or 1813, a local law in Guernsey to suppress smuggling from this Island to the mother country. In that Ordonnance, Alderney was mentioned: and it was a very proper law; but I maintain that the Guernsey Court has no power whatever to legislate for this Island.

5059. Mr. *Barbenson* (Procureur). If you examine the register you will find fifty or a hundred instances of it.

5060. Suppose the Guernsey Court were to make an Ordonnance regulating your streets?—They would never do that.

5061. Mr. *Le Cocq.* I think the Guernsey Court has no power to make our local laws; we may be considered to be the most competent judges of what is proper for us.

5062. Mr. *Barbenson* (Procureur). I believe the Royal Court of Guernsey has taken upon themselves to do many things which they have no right to do. I believe, the Bailiff of Guernsey, Mr. Brock, sent an Ordonnance some time ago, requiring it to be registered: and the Court resisted it; but the Judge was requested to write to Mr. Brock upon the subject.

5063. Mr. *Gaudion.* We framed a regulation of our own on the subject.

5064. Is it understood that the Jurats may retire from their offices?—There have been instances of a Jurat resigning through infirmity, and age. It passes through the States; and the application is sent to the Royal Court of Guernsey who decide upon it.

5065. What salaries are received by the officers of the Court here?—There is only the Procureur, who has a salary. He receives a salary of forty pounds a year from the Crown revenues of the Island. For the want of a salary for the Contrôle, I am sorry to say, we have no likelihood of having that officer here. No man in our small population will dedicate a few years of his life to learn the law and make himself efficient to perform that office.

5066. Have you any advocates?—We have none now. The Procureur was an advocate; he succeeded me.

5067. Mr. *Barbenson* (Procureur). It would be highly necessary that there should be a Contrôle. The public suffer from the want of one.

5068. What is the inconvenience which is produced?—Mr. *Gaudion.* In the case of parties having civil cases, there is only the Procureur on one side, and the defendant is debarred from having a defender. The Greffier has no salary; whereas in the other Islands that officer has a salary.

5069. Has the Greffier any fees from criminal causes?—When he extracts documents to be sent to Guernsey, he has his fees, which are paid by the States from their own revenue.

5070. Has the population increased since the last census?—No; the boys and girls as they rise up leave the Island. I do not think that the population has increased.

5071. Have you any cause en adjonction?—Yes.

5072. Is it tried here, or do you go to Guernsey?—The cause is entered in this Court, and is then sent by this Court to Guernsey; it must be proceeded with within a year and a day after. Supposing now we had advocates here, such a cause must be patronized by a Crown officer.

5073. Mr. *Barbenson* (Procureur). Some years ago, in the year 1815, I think, the Court or the States applied to the Royal Court for a change in the law respecting a cause en adjonction, that the Court of Alderney might have some power to judge in those cases; and there is a petition to that effect upon the records. It did not come within the competency of the Guernsey Court to make any change; but still they might have recommended it to Her Majesty in Council. I would beg to say that I have known two cases here, lately, which were commenced before this Court, and the parties, for want of money, have been obliged to drop them. It is attended with great expense going to Guernsey; and they could not afford to go: therefore they have been debarred from having justice done them.

5074. Mr. *Gaudion.* It would be desirable that this Court should possess such power in adjudicating a cause en adjonction, because there are some little cases occurring in our small Island of defamation of character and so on, which, on account of the expenses, cannot be proceeded with.

5075. They could bring a civil action in this Court for the injury done them in such a case, could not they?—Not for defamation: there is no civil action for it.

5076. Mr. *Barbenson* (Procureur). It might be said that a person should have a right to appeal to a superior authority, that is the Royal Court; but, in criminal cases, there is no appeal; and, if any change were to take place in that part of our law, I do not know whether appeals ought to be sent to the Royal Court of Guernsey.

5077. If any gentleman who was defamed might bring a civil action for damages for defamation, you would get rid of that difficulty?

5078. Yes; in which case there might be an appeal to the Royal Court, as in the case of any other civil action.

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5079. Or, if it were an action which was injurious to the public, such as a provocation to a breach of the peace, it might be brought as a purely criminal case?—Yes.

5080. Mr. *Gaudion.* In the cases, which the Procureur alludes to, I think the evil would counterbalance the good, for this reason: before you can fine a person, in a civil case, you must have evidence; and, according to our system of law, no evidence can be carried from this Court to that of Guernsey, unless the evidence is taken in writing. Consequently, if you adjudicate in this Court between parties for defamation of character, and decide that case upon vivâ voce evidence and the party appeals to Guernsey, that evidence must go to that Court.

5081. Mr. *Barbenson* (Procureur). But the party may not wish to appeal.

5082. Mr. *Gaudion.* Anything of that kind, I humbly suggest, should be by Writ of Error. On a point of law, it might be done; but, if you give a right of appeal upon a question of that kind, you allow too large a latitude.

5083. That goes into the question of whether you should have any appeal at all upon matters of fact from any Court which decides the fact?

5084. Mr. *Barbenson* (Procureur). I should say, at all events, let the amount be limited. I think there would be great difficulty in letting the Court of Alderney decide any question of that kind. We know what the Court is now: but we do not know what we may have been some centuries back, or what we may come to in future.

5085. *The following list of the Judges of Alderney was put in by the Greffier.*

List of the Judges of Alderney.

| Dates of Appointment. | Where they first appeared. | Names. | When Dead. |
|---|---|---|---|
| 1612, April 20. . . | In an Act of Guernsey Court . | Peter Herivel . . | Unknown. |
| 1637, January 8 . . | In signing a Contract . . . | Edward Gauvain . | 1641. |
| 1641, October 8 . . | By signing his name in Acts . | Peter Le Cocq . . | 1659, December 31 |
| 1659–60, January . . | Ditto . . . . . | Charles Gaudion (late Procureur). | 1682, January. |
| 1683, July 28 . . . | Sworn by the Court. . . . | Nich. Le Cocq. . | 1695–6, March 10. |
| 1696, March 28 . . | Idem . . . . . | Rich. Le Cocq . . | 1701–2, Feb. 16. |
| 1702, September 12 . | Idem . . . . . | Nich. Duplain . . | 1703, November 19 |
| 1703–4, February 1 . | Idem . . . . . | Thos. Le Cocq . . | 1760, May 7. |
| 1760, May 27 . . . | Idem . . . . . | John Simon Son Wm. | 1769, October 14. |
| 1769, November 11 . | Idem . . . . . | John Gouvain . . | 1793, August 20. |
| 1802, July 10 . . . | Idem . . . . . | John Le Mesurier (resigned). | 1803, January 21. |
| 1803, January 21 . . | Idem . . . . . | John Ollivier, died | 1807, January 11. |
| 1807, August 1 . . | Idem . . . . . | Peter Gauvain . . | 1836, April 2. |
| 1836 . . . . . | Idem . . . . . | John Gaudion . . | Vivat. |

[Adjourned.]

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At Hazlehurst's Hotel, Sark.

*Monday, 5th October,* 1846.

(Notes taken by Mr. Ellis in the absence of the short-hand writer.*)

GUERNSEY.

Notes taken in Sark by Mr. Ellis.

Ernest Le Pelley, Esq., Lord of Sark.

October 5th, 1846.

5086. Mr. *Ernest Le Pelley* (Lord of Sark). (Evidence of Thursday, October the first, read to him from my notes.) Shows me a copy of Order of Council of Charles II., May 19th, 1675, produced before the Commissioners on that day.†

5087. The imprisonment inflicted by the Seneschal may be three times twenty four hours, and not twenty four hours, as stated in the evidence of Mr. MacCulloch; but the fine of three livres tournois is right.

5088. The Prevôt is appointed by the Lord, sworn in by the Sénéchal. He also acts as Her Majesty's Procureur, as the person to bring forward cases. He gives conclusions as l'officier de la Reine. He has also the custody of persons in the lock-up house near the church. The constable is appointed by the Chefs Plaids, with a veto by the Lord, and sworn in by Sénéchal. He never has permanent custody of prisoners. He takes persons into custody and brings them before the Sénéchal. After the prisoner has been convicted, or if he is to be sent to Guernsey, the Prevôt takes him. The constable, if late in the evening, puts him in the lock-up house; but he must have an order from the Sénéchal. I cannot say whether I could refuse to accept the resignation of their offices from the Sénéchal, Prevôt, or Constable. I cannot turn them out; but I could complain to the Cour Royale of Guernsey. They might admonish; I think they could discharge. I say this of the Sénéchal, Prevôt, and Constable. A Constable is vingtenier the first year, and constable the next. They are both peace officers. A vingtenier is first appointed by the Chefs Plaids: the other is a thing of course; but there is a formal appointment. Constables are generally taken from tenants and sons of tenants. The tenants are jealous of having any one else. There is no salary at all; some fees. The vingteniers and the constables have no fees at all, criminal or civil.

5089. The tenants are the holders of the forty indivisible tenements of Sark. They form the Chefs Plaids with the Lord, Sénéchal, Prevôt, and Greffier. They pass Ordinances, for

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* The short-hand writer was unable to attend at Sark, in consequence of the tempestuous state of the weather.

† See p. 186.

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instance, for roads; lay rates in Chefs Plaids which support the poor and are appropriated to the purposes of Island. The constable serves only two years, one as vingtenier the other as constable. No one has a voice in Chefs Plaids if not a tenant. The officers may, if tenants. The Lord has a veto. He is tenant also. He never does vote. The Sénéchal is President.

5090 An Order in Council of Greenwich, 1583, is recited, in the Act of Thomas Leighton appointing the five Jurats and assigning their duties, which, in matters of crime, extend to "toutes matières et actions de forfait excés et injures par emprisonnement, ou amendes n'excédent la somme de soixante sols et un denier tournois, pourvu qu'il n'y ait matière de crime, auquel cas, les dits Jurez seront tenus envoyer par le Prevôt de la dite Isle leur corps avec la cause à la Justice de la dite Isle de Guernsey pour y procéder comme sera expédient, et de ce qui sera fait et passé devant eux en garderont et donneront fidelle records."

5091. A Greffier is appointed by the same instrument.

"Le Clerq de la Cour fera registre, et gardera fidelle et loyall records de toutes causes qui seront passées par devant Justice, et pour ses debvoirs prendra le tiers des mêmes amendes, à sçavoir de cinq sols et au desoubs, et des defaultes, toutesfois et quantes qui seront levées et recueillies." Also some fees for his signature and copies.

5091. The duty of the Prevôt is also laid down, both as Procureur and for arresting, summoning and levying, with fees.

5092. I have been here seven years. Only one prisoner was sent to Guernsey in that time. That was a Jersey man. He came over in a steam-boat, made a noise, and struck the constable. There has not been a criminal case before our own Court for two years. Two civil cases, one for injure (they call it adjonction), the other a debt. The effect of the Order of Charles is to get rid of the Jurats; but it leaves the jurisdiction as before.

5092. No person, not born in Sark, can reside above six weeks without the leave of the Lord. That is by an Order in Council of James the first, 9 James First, 1611, 12th August, which prescribes not to "make any long abode," unless they take the oath of allegiance, and unless license procured of Lord in six weeks.

5093. At the census of 1841, I think the population was 800. It is fewer now; there were more strangers then and miners. I think about 700 now. In summer our intercourse with Guernsey is daily, in winter less; once a week certainly.

5094. We do not recognize the power of the Guernsey Court to make laws for us: but, if the minority were dissatisfied with an order of our Chefs Plaids, they might complain to the Cour Royale of Guernsey, who would hear the complaint. I retract that. I do not think minority could go against majority. I do not admit the Cour Royale could annul; but, I think, the Lord might complain of Chefs Plaids for refusing to pass Ordinances, and the Chefs Plaids of Lord for exercising his veto. I think, on such a complaint, the Cour Royale could compel the Chefs Plaids to pass the Ordinance; but I do not know what means of compulsion would be employed; and I think that, on complaint of the Chefs Plaids, the Cour Royale might order the Lord to withdraw his veto. I do not know whether that would be compulsory. I suppose it would go to the Privy Council. Mr. MacCulloch says my veto is absolute. Also, if the Chefs Plaids passed an Ordinance contrary to a known superior law, then the complaint would be to the Cour Royale, and they might declare it null. The veto has been exercised but once in the last fifty years.

5095. We pass Ordinances for shutting public houses. The Lord licences them to sell liquors, to be renewed annually at St. Michaels.

Aux Chefs Plaids, tenus le 3e Oct. 1827, en présence de Pierre Le Pelley, Ecr., Seigneur de cette Ile de Serk, et dépendance, et par Monsr. Jean Falle, Sénéchal, Messrs. Le Prevôt, le Greffier, les Connétables, et les habitans présens.

Vu que plusieurs pères de familles négligent leurs femmes et enfants, et s'adonnent à l'ivrognerie, et que les cabaretiers leur donnent à boire mal à propos, en leur faisant de longs crédits, et continuant à leur donner de la liqueur, lors qu'ils sont déjà ivres, ce qui tend à démoraliser l'Ile et à réduire des familles en besoin; et vu la difficulté de faire des réglements à ce sujet: les Chefs Plaids présens prient Mr. le Seignr. de cette Ile, en qui réside le pouvoir de donner et d'ôter les licences, afin de mettre les cabaretiers en leurs gardes, de ne point donner des licences à l'avenir pour plus d'une année, et de ne point les renouveller, s'il y a des plaintes bien fondées contre eux, et en les continuant toujours, s'ils obtemperent aux vues des habitants présentement expliquées, le laissant à lui à en juger: et à ce a été présent Pierre Le Pelley, Ecr., Séignr. de cette Isle, lequel a consenti au vœu des habitants, et a promis d'y veiller.

Aux Chefs Plaids, tenus le 20 Octr. 1779, par devant Madme. Le Pelley, Veuve de Monsr. Pierre Le Pelley, et tutrice de ses enfants, en son vivant Seigneur de cette Isle de Serk et dépendance, Monsr Henry Le Mazurier, Sénéchal, le Greffier, le Prévost, les Connétables et les habitants.

Le dit jour, les Ordonnances, cy au dessus mentionnées, toutes renouvellées.

L'Ordonnance concernant les ouefs et oisseaux est renouvellée.

Celle concernant la chasse de l'Isle. Aussi celle pour les liqueurs étrangères. Et ceux qui vendront sans licence ou congé du Seigneur ou de ses successeurs seront mis à £50 d'amende, un quar. au Roi, l'autre quar. au Seigneur, l'autre moitié aux pauvres de cette Isle de Serk.

5096. There are forty five or forty six indivisible tenements. Only forty give a tenancy. In consequence of the division of estates, application was made to James the First, which precluded further division. Some five or six had been separated from the forty; and some belonged to the Lord and had been sold by him. I have the permission of the Crown to sell my Seigneurie, not subjecting the person to the approbation of the Crown; but it must not be to an alien. I cannot sell the land to an alien.

5098. The rates are on realty and personalty both. We farm the impôt on spirits to

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Mr. Thomas Godfray, Prevôt of Sark.

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the Guernsey Harbour Master. The amount of duty per gallon is laid by Guernsey. They give us so much a year; we pay the full impôt price. It ought all to go through the Guernsey Custom House; landing it here at once would be smuggling, or even landing from Guernsey. We are bound to take our spirits from Guernsey.

5099. *Thomas Godfray.* I am the Prevôt of the Island. I think I have been Prevôt for twelve to fifteen years. I acted as Greffier and deputy Prevôt. Since the prison has been built, I have been at the expense of the prisoners. I have been at the expense while the parties were in prison. I should like to know who is to pay. I cannot say how much it costs; it depends upon the number. I give them to eat and drink. I do not know whether I have had any these two years or not. If I took five shillings a year I might gain or lose. I have only a proportion of les menues amendes. If the Sénéchal fines any one, and assigns part to the Queen, I take all to myself. I offered Her Majesty's Receiver, in Guernsey, to give him all the fines for the Queen if he would pay me a salary. He refused. The Greffier and I divide the Chefs Plaids fines. I have done as my predecessors have done. We want a gaoler. I do not know how to pay him. I have hired a man to assist me. I have never paid anything to him. When prisoners are ordered to Guernsey by the Sénéchal, the Court of Guernsey has ordered me to have twelve shillings for the freight of the boat. If I do not freight a boat, but go as a passenger, I get only sixpence there and sixpence back, which is the fare. I get nothing and lose nothing. I have nothing for my attendance on the Court.

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*Tuesday, October* 6, 1846.

October 6th, 1846.

Mr. William Robert, Greffier of Sark.

(Notes taken by Mr. Ellis in Sark, in the absence of the short-hand writer.)

Mr. *William Robert,* Greffier of Sark.

*Shews Actes of Court before the Seneschal.*

5100. There are several causes en adjonction. We try them out; but the parties may always appeal to the Cour Royale of Guernsey at any time. All the civil actions are here. There is a criminal case, the 14th of August, 1841, an accusation of theft by a domestic servant. She confesses.

Le 14e Août, 1841. Devant Monsr. Philippe Guille Sénéchal; Sarah Green, fille mineure, native d'Angleterre, ayant été, ce jour, produite devant la Cour par le ministère de Sieur Thomas Vaudin et Jean Hamon, connétables, étant accusée d'avoir volé et emporté plusieurs effets de la maison des Demoiselles Vigoureux, où elle était Domestique: La Cour, après avoir entendu l'aveu de l'accusée, la déposition par serment des dites demoiselles Vigoureux, de Sieur George Le Masurier, et de Veuve Susanne Le Feuvre, a trouvé l'accusée coupable d'un crime au de-là de sa compétence d'en juger. Mais, vu son âge, sa contrition, et soumission aux Demoiselles Vigoureux, auxquelles elle a publiquement demandé pardon, pour éviter une plus longue exposition publique, ruineuse à son caractère, et dans l'espoir que la sentence limitée de cette Cour suffira pour la mettre sur ses gardes et la rappeller dans les bornes de ses devoirs, l'a condamnée à trois fois vingt quatre heures de prison au pain et à l'eau.

The Court finds the case to be above its competence, but, in consideration of the age and contrition of the offender, condemns her to three days' imprisonment on bread and water. I dare say she might have appealed to a superior Court. I do not recollect any case giving so long an imprisonment either before or after.

5102. Another; 11th September, 1841; charge of Incest; parties absent; prise de corps.

Le 11e Septembre, 1841. Devant Monsr. Philippe Guille, Sénéchal, sur l'information donnée à la Cour, que George de Carteret, fils d'Abraham, natif de cette Ile de Serk, se serait rendu coupable du crime d'inceste avec Emilie de Cartaret, sa fille mineure, lesquels sont présentement absens de cette Ile: La Cour, après avoir entendu des témoins dignes de foi, et ouïe la conclusion des Officiers de la Reine, a décerné prise de corps contre le dit George de Carteret; et est ordonné au Prevôt de la Reine ou député, aux connétables, et à tous officiers publics et autres de cette Ile, de faire toutes les diligences possibles, pour se saisir de la personne du dit de Carteret à son retour, et l'amener en justice; et, pour prévenir qu'il ne s'évade hors cette Ile, est expressement défendu à tous maîtres de navires, barques ou bateaux et autres, de le transporter ou faire transporter hors cette Ile; et défendu à toute personne quelconque de le loger, cacher ou recéler, sur peine aux contrevenants d'être châtiés suivant l'exigence du cas. Et sera ce présent acte publié et affiché au lieu ordinaire, afin que personne n'en prétende cause d'ignorance.

Afterwards, being seized, he was brought before the Sénéchal, ordered to be sent to Guernsey, and constituted a prisoner meanwhile.

Le 19e Octobre, 1842. Devant Monsr. Philippe Guille, Sénéchal, George de Carteret, fils d'Abraham, natif de cette Ile de Serk, à été produit devant la Cour par le ministère des connétables, ayant été saisi en vertu du décret de prise de corps, décerné par cette Cour, en date du 11e Septembre, 1841, contre le dit De Carteret à cause d'accusation de crime d'inceste avec Emilie De Carteret, sa fille mineure: Vu le long temps qui s'est écoulé depuis l'émanation du dit décret, et après avoir oui la niance de l'accusé, Monsr. Le Sénéchal a renvoyé la cause devant la Cour Royale de l'Ile de Guernsey; et est ordonné que le dit De Carteret soit placé sous la garde et custodie du Prevôt de la Reine en cette Ile, pour être produit devant la dite Cour Royale à la première occasion; et sera le dit accusé constitué prisonnier dans la prison publique jusqu'à son départ de cette Ile.

Le 29e Octobre, 1842. Monsr. Le Sénéchal a reçu un Acte de la Cour Royale de l'Ile de Guernsey pour être enregistré sur les Records de cette Ile, dont la teneur suit.

A la Cour Royale de l'Ile de Guernsey, Le 22e Octre., 1842. Devant Jean Guille, Ecr. Juge, delégué, présents Jean Le Messurier, Ecr., Messire William Collings, H. O. Carré, Fréderic Mansell, Thomas W. Gosselin, Thomas Le Retilley, et Harry Dobrée, Ecrs., Jurés.

George De Carteret, fils d'Abraham, de l'Ile de Serk, ayant été, ce jour, produit devant la Cour par le Prevôt de la dite Ile, vertu d'acte de la Cour de la dite Ile de Serk, du 19e courant, accusé comme est porté au dit acte, à quoi recours: La Cour, après avoir entendu un grand nombre de témoins dignes de oi, et ouies les conclusions des Officiers de la Reine, a déchargé le dit De Carteret honorablement de

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tout soupçon de la dite accusation: et, vu que des procédures juridiques ont eu lieu à Serk, la Cour a ordonné que le présent acte sera transmis au Sénéchal de Serk, pour être enregistré sur les records de la dite Ile. Extrait des Registres de la dite Ile de Guernsey.

Signé. JEAN NAFTEL, Dep^te^. Greff^r^. de la Reine.

Thus he was tried and acquitted at Guernsey; and the Act of the Cour Royale was sent here to be registered, and was registered 29th October, 1842.

5103. There are also the Chefs Plaids, 20th January, 1679, where the Letters Patent of James the First are registered. August the 12th, 9th of James the First.

James, (the first), by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c., to our right trusty and right well beloved Sir George Carewe, Knight, Baron of Clopton, Governor of the Isles of Guernesey and Serk, and to the Governor of the said Isles for the time being, and to our welbeloved subject Amice de Carteret Esquier, Bailiff of the said Ile of Guernesey, and to the Bailiff of the said Isle of Guernsey for the time being, and to our welbeloved subject Philipe De Carteret Esquire, of St. Ouen, and Lord of the said Isle of Serk and to our loving subjects the inhabitants of the said Isle of Guernesey and Serk, and to all other our loving subjects to whom these presents shall come, greeting. Whereas the said Isle of Serk, being parcel of the possessions of the ancestors of the said Philipe de Carteret, Lord of the said Isle of Serk, was not partable amongst the sonnes of the said ancestors, but descended only to the eldest sonne; and whereas the Lords of the said Isle of Serk have, of late, granted away some parcells of the said Isle to others to hold of them the said Lord, which never the less cannot change the ancient forme of descende of the same; and whereas, because the possession of the ancient undertenants of the Isles adjacents have bin and doe yet continue partable amongst all the sonnes and daughters togather, though in severall portions, the inhabitants of the said Isle of Serk have an affection to that form of descent and would, as much as in them is, bring their said lands so lately purchased to the like descent, which is both against lawe and all soe to the great dommage and daunger of the said Isle of Serk, in respect that the said Philipes De Carteret, Lord of the said Isle of Serk, and his heirs, are by covenants, in their letters Patents contained, bound to people and inhabite the said Isle of Serk with number of men with provision of armore and other necessaries for the defense of the said Isle of Serk, which charge of men, to be from time to time so furnished, as aforesaid, for the defense of the said Isle of Serk, hath been used to be borne by the tenants and occupiers of the lands lying within the said Isle, according to such rates and proportions as by covenant and agreement betweene the Lord of the said Isle and the said tenants and occupiers have been agreed upon in that behalf, in respect whereof it is found very necessary that the lands lying in the said Isle of Serk, and now remaining in the tenure or occupation of the severall tenants and occupiers thereof, should, as much as may, be kept whole and entire and not to be divided or parted amongst brethren or others coheirs, but that the same, as much as may be, doe always remain and continue inpartable and undivided, without any other charge then such as by reason of their severall tenures they are bound to performe for the occasions aforesaid; and whereas allsoe it is a matter of great consequence and necessitie to restrain, by all good and wholesome ordonnances and provisions, the incombring and over charging of the said land with extraordinary and new charges, whereby the ancient servises, tenures, and duties, originaly and foundamently charged upon the said Isle of Serk, for the preservation, safety and deffence of the same, and for the common good of the Lord and tenants thereof, should be hindred, deminisched or abated; and for as much as neglect of good and timely provisions, in a case of so great importance, would prove very prejudiciall to our service, therefore that in pro of time by often partitions and extraordinary charges layed upon the said lands there would remaine only a number of poore men, unable to defend the same: Knowe ye that We, having had consideration of the premises and greatly desiring the safety quiett and wealth of the said Isle of Serk and of the said Lord and tenants thereof, and to the intend that all our good and loving subjects of the said Isle may, by commandement and direction from ourself, willingly bind themselves to the observations of that wich may be most for their own binefite and good, and enhable them the better to performe the services, tenures and duties where with they are all ready charged, as is aforesaid, of our especiall grace, certain knowledge, and meere motion, have willed, ordained and appointed, and by these presents, for us our heires and successors, doe signify and declare to all our loving subjects, as well of the said Isle of Serk, as allsoe of the Isles of Guernesey and Jersey, that no lands or tenements situal lying or beeing within the said Isle of Serk or any parts thereof shall or ought to be partable or parted amongst any sonnes or amongst the sonnes and daughters togather by force or by reason of any desend of inheritance of or from any ancessors or ancessor w^h^ hath or shall at any time hereafter dye seased of any state in fee simple or fee taile or other state of inheritance of any lands tenement or heriditance within the said Isle of Serk, but that all lands, tenements and hereditaments lying or being within the said Isle of Serk ought and shall, from time to time, descend and come wholy and directly to the eldest sonne and other heires of the sonne in such sort as the rest of the Signorie of the said Philipes De Carteret in the said Isle of Serk and alsoe in the Isle of Jersey doth or aught to doe: and we doe further, for us, our heires and successors, of our especiall grace certain knowledge, and meere motion, declare and signify our mind and pleasure to be that all and every tenant, owner, farmer or occupier of any lands, tenements or heriditaments in Serk aforesaid for the time being shall forbear and utterly cease to rise, sept, or impose, upon any his or their said lands, tenements or heriditaments, any other charge, payment or incombrans then such charges, payments, services and duties as they are bound to perform by their or any other of their tenures of their or any of their said lands to the Senior of the said Isle or otherwise for the defence or preservation of the same: and, for the more safety of the said Isle of Serk and for the better settling of loyal and obedient subjects therein, being a place of importance and subject to danger, of our especiall grace, certain knowledge, and meere motion, we do will and ordaine by this presents that noe strangers borne out of this Isle of Serk shall att any time be here after suffered to dwell, inhabite, remaine, continue or make any longer aboad within the said Isle of Serk, unless every such strangers shall, at such time as he shall be there unto required by such persons as we shall authorise and appoint in that behalf, take the othe commonly called and knowen by the name of the Othe of Alegeans to us, our heires and Successors, according to the forme of the Statute made in the theird year of our Reigne of England, and onlesse the licence or consent of the Lord of the said Isle of Serk for the time being be, within the term of six weeks, procured and obtained in that behalf; and therefore we doe, by this presents, charge and command that none of the inhabitants of the said Isle of Serk doe att any time here after receave into his or their houses any strangers not borne in the said Isle of Serk, either as their servante, undertenant or otherwise,

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Notes taken in Sark by Mr. Ellis.

Mr. William Robert, Greffier of Sark.

October 6th, 1846.

to make aboade with them, but only such who shall, whensoever they shall be thereunto required, as is aforesaid, take the said Othe of alleageans and also procure the consent of the said Lord of the said Isle, as aforesaid, upon peine of our indignation and heavy displeasure to be inflicted upon such as willingly neglect our Royal Commandement herein. And we doe by this present authorize and command our well beloved subject, Robert Slowley, Judge of the said Isle of Serk, and the Judge of the said Isle of Serk for the time being, to accept and take the said othe of alleageance of all and every such stranger or strangers borne out of the said Isle of Serk and comming to make his or their aboade there, any lawe, statute, coustume or restrain to the contrary not withstanding. And further we are well pleased and, for the more ease and quiet and contentment of all our subjects, the inhabitants of the said Isle of Serk, we do by this presents, for us, our heires and successors, grant, that it shall and may be lawful to and for all and every the inhabitants of the Isle of Serk and all other, att all time and times, att their wills and pleasures, to bargaine, sell, convey, let, lease, demis or assigne by writing or writings, sealed with the seal granted to Hélier de Carteret and to his heires, Lords and possessors of the Sinory of the Lordship or fee of Haubert de St Ouen, whose heires the said Philip de Carteret is, any lands, tenements or hereditaments, parcells of this said Isle of Serk, for such states, during such termes, as the tenants, farmers and occupiers of the said Isle of Serk heretofore have been used, or at this present may bargaine, sell, convey, let, lease, demise or assigne the same lands, tenements or hereditaments to any person or persons there, under the seal or seals of the said Isle of Guernsey and Jersey or either of them; and that all every such bargaines, sales, convenances, demises, leases and assignments, sealled with the said seal of the said Philipe de Carteret and of such of his heires as aforesaid, shall be as vailable, effectual and strong in the lawe as if the same had been made or granted under the seal or sealles of the said Islands of Guernezey or Jersey or either of them. And we doe further straitly charge and command you, the said Lord Carewe, Governor of the Isles of Guernezey and Serk, for the time beeing, and you, the said Amice de Carteret, Baillif of the said Isle of Guernezey, and the Bailiff of the said Isle of Guernezey for the time beeing, and you, the said Philipe de Carteret, Sinior of St Ouen, Lord of the said Isle of Serk, and your heires beeing Lords of the said Isle of Serk, that you and every of you do, from time to time, doe your best endeavour to cause these our letters patents and our good will and pleasure there in declared to be from time to time duly executed, performed, and put in use, within the said Isle of Serk, according to the true intent and meaning of these presents, as you and every of you answere to the contrary att your perill, although expresse mention of the true yearly valus or of the certainty of the premises or of any of them or of any other gifts or grants by us or any of our progenitors or predecessors to the said Philipe de Cartaret, Seignor of St Ouen, Lord of the said Isle of Serk, heretofore made, is not made in this presents; any statute, act, ordinants or provisions or restraint to the contrary heretofore had, made, published, ordained or provided, or any other thing, cause or matter whatsoever in any wise not with standing. In witness whereof we have caused these our lettres to be made patents. Witness ourself, at Westminster, the tweldth day of August, in the ninth year of our raigne of England, France and Hirland, and of Scotland the five and fortieth.

Aux Chefs Plaids d'après le jour de Noël, tenus le 20$^{eme}$ Jeanvier, 1679, devant Mons$^{r}$. Thomas de Beauvoir, Sénéchal.

*Philip Guille*, Sénéchal de Serk.

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*Wednesday, October 7th,* 1846.

Charles De Jersey, Esq., Procureur de la Reine.

October 7th, 1846.

*Charles De Jersey*, Esq., Procureur de la Reine, further examined.

5100. Have you any document to hand in to the Commissioners?—I have here a list of the salaries of the public officers. The salary of the Bailiff is 300*l.* a year; of the Procureur, 200*l.*; of the Contrôle, 100*l.*; of the Greffier, 40*l.*; of the Prevôt, 14*l.*; the sergeant, 50*l.*; and the gaoler, 13*l.* a-year.

5101. The Receiver General is not a criminal officer, is he?—No.

5102. Attached to the prison is there any separate establishment, as a house of correction?

Mr. *Carré.* There is not; there are no means of hard labour.

5103. (To Mr. *Carré.*) Are you obliged, when you think simple imprisonment not sufficient, to make the imprisonment solitary?—To make a portion of it solitary on bread and water.

5104. The *Procureur.* I think that a house of correction is very much wanted. That is the general opinion.

5105. Looking at the Approbation des Loix (Lib. xii. chap. 5) we find that certain fees are to be paid to the gaoler on prisoners going in and coming out. " Les prisonniers en cette Isle sont commis en la garde du Portier du Château, lequel en doit estre responsable, et délivrer en justice par le Prevost, lorsqu'il en sera requis; et prent le dit Portier un sol sterlin d'entrée et un sol d'issue pour chacun prisonnier, qui par ordre de Justice est renvoyé au Château, tant pour crime, dette, que punition, et aussi prent deux deniers sterlin pour chacun jour que le dit prisonnier est au Château." Are those fees paid now?

Mr. *Le Febvre* (Greffier). Yes; the fee at present is 2*s.* 6*d.* on going in, and 2*s.* 6*d.* on coming out.

5106. Is that the case with criminals as well as debtors?—Yes.

The *Contrôle.* The reference in the Approbation is to Castle Cornet; a new gaol has been built since that.

Mr. *Carré.* The fees mentioned in the Approbation have been altered since the new gaol was built. I believe the Order in Council approving of the building of the new gaol also fixes the fees which are to be paid.

5107. When was the new prison built?

The *Contrôle.* In 1810 or 1811.

5108. (To Mr. *Carré.*) Can a prisoner be detained for non-payment of the fees?—No. The prisoner must go out on the day fixed by the sentence. The fee is paid by the Receiver, or at least advanced by him; he might be entitled, perhaps, to an action against the prisoner for it.

5109. The *Procureur.* The Receiver pays all: but, when a prisoner is condemned to costs, he is required to pay if has the means.

5110. The *Contrôle.* The expense now is 11½*d.* a-day. There is a judgment deciding that the Crown cannot recover against a prisoner the expense of his maintenance.

5112. Is that where there is a confiscation?—In any case.

5113. The *Bailiff.* I have here an Order in Council of the 18th of May, 1803; it was to authorize the building of the gaol, which appears to have been built in 1811, "Praying that your Majesty would be graciously pleased to permit them to erect a prison in the town of St. Peter Port, at such place as shall by them be found fit and convenient for securing the persons of criminals, debtors, and others, such prison to be under the same rules and regulations as are, and have ever been used, in the prisons at Castle Cornet, viz., that the porter of the castle, or gaoler, and the executioner shall be named and appointed by any of the Governors of this Island for the time being, and their salaries paid out of your Majesty's revenue in this Island. Secondly, that the maintenance of prisoners committed for crimes, who are unable to provide themselves, shall also be paid out of the said revenue." Then here is the Ordinance containing the prison rules, of the 16th of May, 1818. The sixteenth Article says, "Il sera payé au geolier, comme par le passé, savoir; A l'entrée de chaque prisonnier pour dette ou pour crime 2*s.* 6*d.* A la sortie 2*s.* 6*d.* Chaque fois qu'un prisonnier pour crime sera produit en Cour 2*s.* 6*d.* Pour paille lorsque changée 1*s.* 6*d.* Pour chaque jour dans la prison 3*d.* Idem dans sa maison 6*d.*" The sums opposite the items are not the present sums; nor are they the sums in the Approbation.

5114. (To the *Bailiff.*) Are the prisoners in gaol supported out of the revenues of the Crown?—Yes. We have what is called a hospital, in which persons are sometimes placed. We have a discretionary power in putting certain classes of people there, which would be superseded if there were a house of correction.

5115. Mr. *Carré.* The discretion is exercised in this manner. If a person is taken up for disturbance of the public peace, the officers of the hospital are authorized to detain him there for a fixed period; for six months, or even twelve months.

5116. (To Mr. *Carré.*) To that extent is it used as a prison?—It is used as a prison by the Court. I do not believe the officers of the hospital are bound to detain a prisoner: but they are authorized to do so; and the constables take up parties and place them there: but there is no law to bind them to keep there.

5117. Whence do you derive the power to put a person there?—We choose our own prison.

5118. Mr. *MacCulloch.* The party confined must be a pauper, and incapable of maintaining himself without parochial assistance.

5119. This is apparently a punishment for crime. It appears, therefore, that you inflict one specific punishment on a man if he is a pauper, and another if he is not.

5120. Mr. *Carré.* It is not considered exactly as a punishment. Supposing a person is constantly in a state of intoxication and unable to maintain himself, requiring the assistance of the parish officers, though an able-bodied man and able to labour, in such a case he is put in there.

5121. Where he is a notorious rogue and vagabond you mean?—Yes.

5122. Supposing you had a treadmill here; what power should you have to put a man upon it?—We should get over the difficulty, perhaps, in the same way as it has been got over in the case of transportation.

5123. (To the *Bailiff.*) How long have you been Bailiff?—About a year and a half.

5124. (To Mr. *Carré.*) How long have you been on the Bench?—Fifteen years.

5125. (To the *Bailiff.*) I observe that you differ from the practice in Jersey, in this respect, that the Bailiff or Deputy Bailiff here, as the presiding Judge, begins by stating his own view?—Yes.

5126. Will you state whether you find in general that differences arise, or do the Jurats agree with you?—In the majority of cases the Jurats agree with me.

5127. (To Mr. *Carré.*) Do you agree to that?—I think they do, decidedly so.

5128. The differences of opinion from the opinion of the presiding Judge, would be an exception?—Rather an exception than otherwise.

5129. Was that the case, also, when the Bailiff was a person who had not been brought up to the bar?—I should say that, in a large majority of instances, it was so.

5130. You practised at the bar here, did not you?—I did.

5131. How is the Deputy Bailiff appointed?—He is appointed by the Bailiff for the time being.

5132. Of course, the office nominally expires at the death or resignation of the Bailiff?—It does absolutely. As soon as possible, after the death of the Bailiff, the Court assemble, after having signified to the Governor their intention to do so and for what purpose, and elect, out of their body, a magistrate, who is termed Juge délégué.

5133. He is practically the Bailiff till the new appointment?—Yes.

5134. Can the Juge délégué appoint a Deputy also?—He has no right to do so.

5135. Has the Lieutenant Governor a veto upon the election of the Jurats?—I do not believe that any such right exists.

5136. Has he neither a veto nor the right of suspension?—No.

5137. Does not Warburton say so?—Yes, he says so; but I think it is an error.

5138. The *Contrôle.* I think there is something upon that point in the Réglemens of the Commissioners in 1607.

5139. Mr. *Carré.* I believe that power was assumed and exercised by Sir Thomas Leighton, but without any authority that I could ever find; and it fell into disuse after some period. It certainly did not exist before his time.

5140. You cannot find any law which sanctions Warburton in saying that, when a Jurat is chosen, he is not to be sworn till the Governor is made acquainted with his election and approves

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of it?—I have searched, and cannot find any ground for it whatever: and it certainly was not practiced till Sir Thomas Leighton's time.

5141. He was Governor at the time of the Approbation, was not he?—Yes. It is not mentioned there. The Governor has a right to be present at the election of Jurats. All the ancient laws which state how the Jurats are to be elected say nothing about the right of the Governor to any veto.

The *Bailiff.* It is not mentioned in the Précepte d'Assize.

5142. (To Mr. *Carré.*) Is not another of the Jurats, Mr. Andros, an English lawyer?—Yes; he was a solicitor in London.

5143. The present Bailiff is an English barrister, is not he?

5144. The *Bailiff.* I was Recorder of Dartmouth and Judge of the Borough court of Wells.

5145. Is there any other gentleman, who has been bred to the law, upon the bench?

5146. Mr. *Carré.* I think not. Mr. Le Retilley was deputy Prevôt for many years.

5147. (To Mr. *Carré.*) Are you engaged in any employment except judicially?—No.

5148. Are any of the gentlemen on the Bench engaged in trade?

5149. Mr. *Harry Dobrée.* I believe I am the only one.

5150. What is your business?—I am a general merchant, in partnership with my father.

5151. Have you any thing to do with the spirit trade?—Yes; I am concerned in the spirit trade.

5152. Have you anything to do with the sale of beer or ale, either wholesale or retail?—No. The business my father and myself carry on here, as regards the wine and spirit trade, is confined exclusively to exportation, with the exception of a few private gentlemen who occasionally draw their supplies from us.

5153. You do not supply any public houses?—No; we have no connection whatever with public houses or shops of any sort.

5154. Is not Mr. Mansell a brewer?

Mr. *Carré.* He was. He has given up the business several years since. He gave it up at the time he was elected.

5155. Has he any connection in the trade?—He has a son in the trade.

5156. When the question of licensing houses is before the Court, does Mr. Mansell sit?—Certainly.

5157. (To Mr. *Le Marchant.*) Are you in any business?—I have been a merchant. I have retired from business.

5158. (To Mr. *Le Retilley.*) Are you in any business?—No.

5159. Is Sir William Collings in any business?—He was a general merchant. He has been long out of business.

5160. (To Mr. *Gosselin.*) Are you in any business?—No, I am not.

5161. Have you been in business?—I have been, but for a very short time.

5162. What was your business?—General merchant.

5163. You have stated in writing to the Commissioners that you think it unreasonable that gentlemen on the Bench should not have the means of retiring when they ask for it.—I do. I ask the same privilege that the douzeniers have of retiring at the age of sixty.

5164. The Commissioners understand, from your communication to them, that you were elected against your consent?—I was elected to the office of Jurat, in 1832, against my will. In 1838, I petitioned Her Majesty in Council for leave to resign. My petition was transmitted to the States for their consideration of the subject; and they rejected my application.

5165. They advised Her Majesty to reject it probably?—They rejected it in the first instance; and the matter dropped.

5166. Has it often occurred that gentlemen have been elected against their will?

5167. Mr. *Le Marchant.* It has sometimes occurred. I was elected very much against my own wish, when I was out of the Island.

5168. Mr. *Jeremie.* That was the case with Mr. Andros.

5169. When was Mr. Andros elected?—He was sworn in, the 14th of January, 1843.

5170. Mr. *Gosselin.* I have now acted nearly fifteen years as Jurat of the Royal Court; and, being elected for life, I have no prospect of being allowed to retire: but, as douzeniers and officers of the militia are permitted to resign their situations at the age of sixty, I would ask, as a matter of justice, for the Jurats, that they, at the age of sixty, may likewise be permitted to vacate their offices or not, according as they feel disposed.

5171. Mr. *De Havilland.* I do not know whether the Commissioners have looked at the article of the Reglémens of the Commissioners of 1607 respecting a Jurat not being a brewer. It appeared to me that it had reference only to the cause which was then before the Court; that is to say that, if he was a brewer, he could not judge in that cause. It does not appear to me to be a disqualification generally.

5172. (To Mr. *De Havilland.*) Have you been in business at all?—I hold no other situation, nor have any other calling, than that of the Bench in this Island. But I hold rather an essential appointment, which is that of actuary to the fund at Madras for the provision for the families and children of the whole of the officers of that army.

5173. Does that take up much of your time?—Sometimes it does.

5174. Do you find it interfere at all with your duties, as a Jurat?—No; I do not.

5175. Were you a member of the Indian army at any period of your life?—I have been a member of the Indian army fifty four years. I was with it for thirty two years.

5176. (To Mr. *Carré.*) In Jersey a great many gentlemen who have filled the office of Jurat have succeeded to that office after filling other offices. They have been constables for a certain number of years; and the usual mode of obtaining the office of Jurat was first of all

serving some subordinate office. Is that the case in this Island?—It is by no means necessary; it is not made obligatory by any law.

5177. Is it often a preliminary step?—It is very often.

5178. Mr. *Gosselin.* I have served most of the parochial offices.

5179. Mr. *Le Retilley.* I believe almost every one of us has served the parochial offices. I had been deputy Sheriff thirty years.

5180. Mr. *Carré.* I was at the Bar, and have not served them; but most of the Jurats have.

5181. So that the electors look among those who have filled the parochial offices for their Jurats?—Yes.

5182. Mr. *De Havilland.* They have the means of becoming better acquainted with them from their holding those offices.

5183. (To Mr. *Edgar MacCulloch.*) Are you in any business? -No.

5184. Have you been so?—No.

5185. (To Mr. *Metivier.*) Are you, or have you been, in business?—I have never been in business in Guernsey. I have been a merchant abroad for many years.

5186. (To Mr. *Carré.*) Is it the case that any of the gentlemen on the Bench are related to each other?—I am related to no one but Sir William Collings and Mr. Mansell. Sir William Collings is my mother's brother. I am connected with Mr. Mansell only by alliance.

5187. Is that the case to a considerable degree upon the Bench?

5188. Mr. *Le Retilley.* I have no relations upon the Bench.

5189. May we take it that there are several cases of family connection among the Jurats?

5190. There are.

5191. (To Mr. *Carré.*) Do not occasions sometimes arise, in which it is necessary for gentlemen who sit upon the Bench to choose whether they will cease to act in a public capacity in one way or the other. There was a great public meeting, for instance, pending the trial of certain gentlemen of the Militia. That meeting took place between the mise en accusation and the trial, did not it?—I do not recollect the date at which the public meeting happened.

5192. Mr. *Maillard.* The meeting was held the 2nd of July, 1844.

5193. Did not the Jurats find themselves compelled to abstain either from attending that meeting or from the trial?

5194. Mr *Carré.* I, for one, abstained from attending the meeting officially. That is to say, I was present at the meeting to see what was going on; but I only went as a matter of curiosity.

5195. Do you recollect whether any gentlemen who were Jurats took part in the proceedings of the meeting?—I did not see any. I heard that the Bailiff, Colonel Guille, was called forward.

5196. I see the name of Mr. Collings here; is that the present Sir William Collings?

Mr. *Jeremie.* No; the name is Joseph there. This is Sir William Collings.

5197. There is a gentleman also of the name of Andros: is that the Jurat?—No; that is his brother, who was there.

5198. Did Mr. Guille take the Chair upon that occasion?—No.

5199. In point of fact, were the members of the Court all there?

Mr. *Carré.* I do not know indeed.

5200. Mr. *Le Retilley.* I think the only one of the Jurats who was on the platform was Colonel Guille.

5201. Mr *De Havilland.* I was there as a matter of curiosity.

5202. (To Col. *De Havilland.*) Were you there at the close of the meeting?—I rather think I was.

5203. Do you recollect Colonel Guille proposing three cheers for the loyal Militia?—I do not recollect that.

5204. (To Mr. *Jeremie.*) Do you recollect whether Mr. Guille did so?—I was there, the greater part of the time; and I did not see any one of the Jurats there, except the Bailiff, Mr. Guille.

5205. (To Mr. *Jeremie.*) Did he take a part in the proceedings?—No; he was on the platform. I did not know he was there till all was over. Just before the meeting dispersed, he certainly called to mind the services of the Militia. As to seeing any of the Jurats there, I do not think there was one.

5206. He proposed a cheer for the Militia, did not he?—Yes; he proposed a cheer for the Militia.

5207. One gentleman proposed a cheer for the Bailiff and the Royal Court, did not he?—That might have been so; but I cannot recollect.

5208. Mr. *De Courcy.* Such was the case; I recollect it, I was there; but there was no reply.

5209. Mr. *Carré.* I think it right to add that many of the Jurats, on the occasion of that meeting, considered that there was a great deal of impropriety in the meeting, and looked upon it as rather an unconstitutional act.

5210. Do not you think that the Jurats might sometimes be driven to choose between abandoning their public duty, as heading a constitutional meeting of the inhabitants, or being placed in rather an embarrassing situation as Judges?—I should think it was their duty generally to abstain from such meetings. But it would depend very much upon what was the object of the meeting, whether there was any question of law depending upon the object of the meeting. If it was a question respecting any improvement in the law, I do not know why the magistrates should abstain from going. In general, I think the Jurats of the Court abstain from attending such meetings.

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5211. Mr. *Mellish.* I was constable, at the time of the meeting: and the Bailiff did not come forward or take any part in it; but he was called for by the public. It was after he was called for by the people that he came forward.

5212. After he was called for did he propose three cheers for the Militia?—Something was said about the Militia afterwards. There was a medley of matters; and they cheered together.

5213. Mr. *De Havilland.* This meeting was simply for a declaration of our loyalty to the Queen. If my recollection is correct, the Court consulted together, and determined not to go there as a body, but only such individuals as might wish to go.

5214. (To Mr. *De Havilland.*) If it were merely a meeting to express your loyalty to the Queen, how was it that certain gentlemen disapproved of the meeting altogether?—There was an address drawn up to that effect; that was all that was done.

5215. Was not the meeting in consequence of the proceedings of some gentlemen forming part of the Militia having been impeached?—No. The feeling about the Militia was very great.

5216. Had the meeting nothing to do with it?—I think not.

5217. The Militia proceedings were alluded to, were not they?—At the time the Militia was under a ban; and there was a great feeling in the Island.

5218. Mr. *Jeremie.* The Island, as the Islanders considered, had been grievously aspersed in the House of Commons.

5219. (To Mr. *Jeremie.*) Was not the aspersion relative to certain words which had fallen from some gentlemen in the Militia?—No; the inhabitants were considered to be in a state of rebellion, and six hundred troops came here to put it down. That being the case, there was a meeting held by the inhabitants for the purpose of making a declaration that they were, as they had always conceived themselves to be, loyal subjects: and, as in England the manner of getting up of these public meetings was by no means unusual or contrary to any regulations, they thought they might do the same thing here. There is a remark which has fallen from the Lieutenant Bailiff which I will take the liberty of setting right. He has spoken about its being an unconstitutional meeting. Fortunately, we are not in the habit of having many troops sent over here; and that meeting was the most extraordinary that ever was held. Such meetings were never held in the open air. I suppose Mr. Carré meant that it was unconstitutional, because none of the constitutional authorities called for it.

5220. Mr. *Carré.* I do not think any allusion was made at the meeting to the proceedings which were pending. It was not considered as having any reference to them. It was the manner of the proceeding, and not the matter, to which I alluded.

5221. Mr. *Jeremie.* The fact is that the meeting was held to express a feeling of loyalty and proper feeling to the Sovereign under the circumstances. The Island had been aspersed by several members of the House of Commons; and they were declared to be in a state of rebellion: and the troops having come here gave a colouring to the state of the Island, and represented it to be in such a state which it really was not. There was no more necessity for those troops than for the French coming here themselves.

5222. (To Mr. *Jeremie.*) We see the first resolution is, "We, the undersigned, native and other inhabitants of your Majesty's Island of Guernsey, beg leave humbly to approach your Majesty, with the expression of the profound feeling of sorrow which has been caused to us, by certain injurious and unfounded imputations of disloyalty and *conspiracies* which have recently been cast upon us." Had not that relation to the particular case of those officers which was then before the Court?—No, not at all. The case of those officers came afterwards. The expressions there had nothing to do with the charges against the militia officers.

5223. Mr. *De Havilland.* Colonel Lane is present, who took a very active part in the meeting, and who, perhaps, could give the Commissioners better information than any one else.

5224. (To *Colonel Lane.*) You were present at the meeting, were you?—Yes.

5225. Can you state whether the late proceedings respecting the militia men formed a part of the exciting topics at the meeting?—No; the meeting arose from a desire on the part of the gentlemen of the Island, to repel an accusation of disloyalty which had been made use of in the House of Commons, I believe by Mr. Roebuck.

5226. Had those charges any reference to the question of the militia men?—It might have arisen out of the proceedings against the militia officers. The two matters could not be very well separated. That, I believe, gave rise to the observations in the House of Commons: but the meeting had no reference to the charge.

5227. Mr. *John Talbot.* (Editor of the *Star.*) I was in daily communication with Sir Thomas De Saumarez, about the time of this meeting: and I can state positively that he made it a positive condition that nothing of a political nature should be introduced at the meeting. It was to be strictly and entirely a declaration of loyalty, without any reference to General Napier, or to any circumstances in which the General was concerned; and many others signed the requisition upon the same understanding.

5228. Were not you rather surprised, then, at a cheer being given for the Court, and that being responded to by the President of the Court calling for a cheer for the militia?—I cannot at this moment state what my feelings were; but so thoroughly was it understood that this was only a declaration of loyalty, that the address to Her Majesty was signed, I believe, by nearly all the clergy of the Island, by the Queen's law officers, and, I believe, by most of the Jurats, as well as by most of the British residents generally.

5229. The *Bailiff.* Hearing what I have heard of the meeting to-day, and feeling my own position, I should say that the existence of such a meeting would never embarrass my mind. I should think that the meeting would go on very well without me.

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5230. (To the *Bailiff.*) In any question of party politics, or any question which interested very deeply the Island, would not a gentleman on the Bench either be obliged to give up his character as a Judge, or his character as a politician?—I do not think any man's character as a politician depends upon his attending any one meeting.

5231. Would he not be prevented taking part in some particular questions of local politics?—I do not see how any man could very well feel himself to be in a dilemma in such a case.

5232. Supposing you take the case of some public question, twelve important gentlemen of the Island must either lose their influence in public affairs, or find difficulty in acting as Judges?—I think the loss even of the dozen best men from a public meeting is a very slight evil, and more than compensated by having a dozen men to work on the same subject in a different sphere.

5233. Would there not be a difficulty in their acting in both positions?—I should abstain from acting in both, as a general rule.

5234. Colonel *Lane.* Whatever Mr. Bailie Guille proposed was independent of the meeting.

5235. The Rev. *Daniel Dobrée.* I am the rector of The Forest and Torteval. I wish to mention to the Commissioners that, about the time of this meeting, the walls of the town were decorated with the most exciting placards against General Napier, reflecting upon his character and conduct; and no means whatever were taken to put them down, or take them away. I brought them under the notice of Mr. Alfred Payne, the then constable.

5236. (To Mr. *Dobrée.*) Can you state whether those placards, which were about antecedent to the meeting, had any reference to the trial?—I should say they had reference to the general proceedings.

5237. To the proceedings upon the subject of the militia officers?—I should say that they had.

5238. Do you recollect, of your own memory, whether that was so or not?—I could not state it positively; but it is my opinion. It appears to me rather an odd way of testifying our loyalty to the Sovereign to abuse her representative.

5239. Mr. *Payne.* I was assistant constable at the time, and wish to make an observation.

5240. (To Mr. *Payne.*) Were you assistant constable of the town parish?—Yes. There were a few badly written placards stuck about the town.

5241. Do you mean ill composed?—No; badly written. There were but a few words in them. Mr. Brooke, one of the Douzaine, called on me, requesting me to keep a look out, and, if I saw any thing, to get them either pulled down, or the walls washed; which I did.

5242. Mr. *Mellish.* There were some on the Court House, which were taken down by myself. They were all written. There were no printed placards, excepting those calling the meeting.

5243. How many did you take down?—Two.

5244. (To Mr. *Payne.*) How many did you take down?—I do not think I took down above four or five; but there were considerably more in the other direction. They were all very badly written: I thought they were but of little consequence; and I did not rub them out.

5245. Mr. *Mellish.* Upon the placard that called the meeting there was nothing, except the notice of the meeting. I have one of them here.

*The placard was read as follows.*

The native and resident inhabitants of all the parishes of Guernsey are invited to attend a general public meeting, to be held on the New Ground, on Tuesday, July 2nd, 1844, at twelve o'clock at noon, to consider the propriety of adopting an Address to Her Most Gracious Majesty, the Queen, expressive of the devoted and unaltered loyalty of the said inhabitants to Her Majesty's person and Government.—God save the Queen.

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Mr. *Harry Dobrée,* Jurat, examined.

Harry Dobrée, Esq., Jurat.

5246. The Commissioners have had a draft of a letter put into their hands. Will you look at it, and see whether it is in your hand writing?—Yes; it is my writing.

*The paper was read as follows.*

Sir,—As I find from your letter to me, under date of ——— instant, that some legal quibble or informality precludes, in the opinion of the Court, the possibility of bringing Peter Allez [*the words "Peter Allez" are in pencil*] to trial, I conceive, that it will not tend to the ends of justice to put Josias Le Pelley on his defence, whilst another as guilty or more guilty individual, judging from the minutes of evidence before me, is by some defect in the law enabled to escape justice. I am further of opinion that (unless you have other evidence to produce than I am in possession of), that much uncertainty and difficulty would exist in obtaining a verdict for the Crown in this case, from the numerous relations and friends of the accused, who would be found amongst the witnesses you would have to produce; and, being of opinion that the interests of the Crown would be better served by the abandonment of an uncertain indictment than by a verdict of nonsuit, I hereby desire that you do not for the present carry on the suit against Le Pelley.

5247. This paper appears to be a sketch of a communication proposing to withdraw some prosecution?—I am quite ready to give an explanation of it. That paper was written, to the best of my recollection, at the house and at the request of my brother, the Rev. Daniel Dobrée, the Rector of The Forest, who at that time was threatened with an indictment for perjury, in consequence of the failure of an accusation brought by himself and others against three officers of the militia, Messrs. Mansell, Rougier and Le Pelley. We both of us, that is to say, my brother and myself, considered it urgent that he should, if possible, avoid the scandal and disgrace of such a proceeding.

5248. What do you mean by failure?—They obtained a verdict of acquittal. This was written after the verdict of acquittal.

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5249. Will you look at the paper again? Does it not appear to contemplate the verdict as being still in suspense?—

*Mr. Dobrée looked at the paper.*

Yes; I see I was wrong.

5250. Might it not have been after the investigation before the Cour du Quartier?—I know that the thing had been under consideration in some form or other. I would say, in consequence of the apprehended failure of the indictment, my brother, at that time, was threatened with an accusation for perjury; and we considered it urgent that he should avoid such a proceeding. I felt myself quite at a loss to know what advice to offer on the subject, till, on his assuring me or expressing to me his conviction that the Lieutenant Governor (and I believe, though I am not quite positive, the name of Sir James Graham was added), that either he or they were ready to do everything in their power to serve him, we agreed, if that were the case, that the best thing that could be done would be to obtain, either from the Home Office or the Lieutenant Governor, a letter to the authorities here to stay proceedings. In the same manner, I would add, as has been subsequently done in the case of Sir William Collings versus General Napier.

5251. That was a Cause en Adjonction, was not it?—Yes. I mean to say that instructions were received from the Home Office to stay proceedings in the case, or to render them impossible by forbidding the Crown officers to take part in the proceedings. The paper now shewn me, to the best of my belief, is a sketch of the letter which we thought it would be desirable, if possible, to obtain. I would only add, that several words and names have since been added and interlined.

5252. Some appeared to be in pencil, and some in ink. When you speak of interlineations, do you speak of both of those?—I believe I do. I would wish to add that I felt more at liberty to advise my brother in this matter, as, in all the cases in which he has unfortunately been mixed up, I have abstained from taking any judicial part whatever in the proceedings.

5253. In saying that, do you include the prosecution of those gentlemen, Messrs. Mansell and others?—I believe I did not sit. In the explanation which I have just given touching that letter, I have no note or copy of it whatever; but, to the best of my knowledge, those were the circumstances under which I wrote that draft. It was done at my brother's house one evening, when I accidentally went for some other purpose.

5254. By whom was it proposed that this letter should be written?—As far as I recollect, my idea was that my brother was threatened at the time with an accusation for perjury; and that letter was written, either with a view to stay proceedings against him, or to stay proceedings against a third party whom it was proposed to bring to justice. Fearing to involve my brother still further, I advised him as much as possible to stay those proceedings.

5255. By whom was it intended that this letter was to be signed?—I forget by whom it was to be signed; by some superior authority; the Governor, most likely, was to sign it.

5256. Of course it could not be a letter which Sir James Graham should sign?—No.

5257. Was it to be a letter of instructions from the Governor to the Crown officers?—Yes.

5258. To whom do you conceive the letter was to have been addressed?—To the officers of the Crown, I suppose.

5259. Do you recollect who suggested the danger of the indictment for perjury?—No; but it was one which I personally felt. My belief was, and is still, that the whole of that charge of conspiracy was totally unfounded and frivolous, and that all those connected with it would involve themselves in difficulty and disgrace by taking any further part in it; and I wished to endeavour to get him out of it.

5260. Of course, the Commissioners are not investigating the propriety of the conduct of any individual, but simply the position in which any gentleman is placed upon the Bench under various circumstances which may arise?—The public impression then was throughout the town that all those parties would be open to an indictment for perjury.

5261. Do you mean by the word frivolous, incredible?—Yes; unfounded, visionary, imaginary.

5262. And false?—I will not make use of the word false; because I do not go the length of saying that some of the parties did not believe in the existence of the conspiracy. At the time that note was written, sufficient had come out to leave the impression on my mind that my brother and some other parties would be open to an indictment for perjury, if they persisted.

5263. Had you seen the evidence at that time?—No; nor do I think I had heard of it except by public report.

5264. You thought it necessary to warn your brother in consequence of public report?—Yes.

5265. Are you quite sure that you did not allude to any language expressed by any member of the Court?—No; I think not.

5266. Are you confident of it?—No; at this distance of time I will not be positive. My memory is bad. It is now a year and a half ago. I am the more willing to hold that idea from the fact that, being personally acquainted with the gentlemen who were accused, many of them, we had some conversation on the subject: and my then feeling was, that Mansell, and Rougier, and Le Pelley, were as incapable as myself of entering into any conspiracy of the sort.

5267. Do you recollect whether anything passed in conversation upon the risk of your brother losing his ecclesiastical preferment by it?—I believe, that in his private parlour at the rectory, I held out to him, or expressed a fear, that he would run some risk in his ecclesiastical capacity, should such a conviction be brought home against him. Of course that is a matter of ecclesiastical law, upon which I do not profess to be well informed: but I conceive that a clergyman accused publicly of perjury, though not convicted, would be liable to ecclesiastical censure: and

I do recollect, I think, calling my brother's attention to that fact, as an additional inducement to him to stay any further proceedings, if possible.

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5268. Your brother did appear at the trial, did not he?—I believe he did.

5269. And has not been prosecuted?—Not that I am aware of.

5270. Do you wish to add anything else?—No.

The Rev. *Daniel Dobrée*. The observations which my brother has just made, oblige me to make certain remarks in answer. My brother has said that the accusation brought against the accused party was brought by me. If the Commissioners look at the indictment, they will find that it was brought by the Lieutenant Governor, and that the Queen's officers compelled me to be an unwilling witness. When I was brought forward as a witness, and compelled to tell the truth, the whole truth, and nothing but the truth, I was summoned to a meeting with my brother.

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The Rev. *Daniel Dobrée* examined.

Rev. Daniel Dobrée.

5271. Was this after, or while you were giving your evidence?—After the secret inquest.

5272. After you had given your evidence au secret?—Yes; or part of it, at all events. I was summoned to a meeting with my brother at Mr. Utermarck's house, the father of Mr. John Utermark, the Contrôle: and every endeavour was made by my brother and Mr. John Utermarck's father to cause me to withdraw from or to shake the testimony I had given, and altogether to get out of the matter. Among other inducements, they told me I should be inevitably convicted of perjury; that I should lose my ecclesiastical preferment; and that I should be disgraced for ever. I told them, as far as my memory serves me: "Gentlemen, I have but one story to tell, and that is a true one. I have no doubt that General Napier, and moreover that Sir James Graham, will preserve me (not *serve* me, but *preserve* me) from unfair play, if a charge of perjury is brought against me: and I have no doubt that the same God that protected me during the whole time of the natural cholera, when all the low Churchmen turned their backs, will protect me also during the political cholera."

5273. Was any thing said in reply to this?—They rather seemed to deter me, and to exhort me most strenuously to keep out of the way: in fact, that I was cutting my own throat.

5274. The prosecution did fail in fact, did not it?—It was never brought forward. The accusation was never brought against me.

5275. The prosecution against Mr. Rougier and others?—Yes; it did fail. Allusion has been made to the accusation of perjury against me. With the permission of the Commissioners, to morrow, I will put in Mr. Dampier's letter to me, as evidence, in which he totally exculpates me from it. I would have brought it to day; but I was not aware that this part of the prosecution would be gone into. My brother was perfectly right in saying that he was not present during the inquiry au Secret. I wish he had been; for, had he been there, he would not have allowed me to be bullied and insulted by Sir William Collings in the manner in which I was. I went to London; and I was told that I should have fair play, and should be protected. I came back again voluntarily; and, under every disadvantage, I gave my evidence. What that evidence was worth it is not for me to say; but I ask you gentlemen, as English Judges, in what court in England, in what court of justice in the world, are the Crown witnesses shut up in different rooms, locked up, and the witnesses for the defence allowed to sit behind the prisoner? Can you wonder that an acquittal took place after that? General Napier's witnesses were kept shut up in the private rooms of the Court by themselves, while the greater part of the witnesses for the defence were allowed to stay behind the accused.

5276. Was this tried à l'Ordinaire?—Yes.

5277. You were stating something which took place at Mr. Utermarck's, the father of the present Contrôle; will you continue your statement upon the subject?—I believe, as far as my recollection serves me, that my brother wished me to get General Napier to stay proceedings against the accused.

5278. Mr. *Harry Dobrée* (Jurat). That is correct; but it was at my brother's own house, a day or two after the meeting which has been alluded to.

5279. (To the Rev. *Daniel Dobrée*). Do you recollect such a conversation?—I do.

5280. You say you did not accede to the proposition at Mr. Utermarck's. Did a meeting take place with your brother at your own house afterwards?—Yes; he came to my house. I repeated to him then and there that I had but one story to tell, and all the universe could not induce me to alter what I had said.

5281. To what was that in answer?—To their wish for me to refuse being a witness, and to abstain from appearing.

5282. What means had you of refusing to appear as a witness?—I might have gone away.

5283. Was it proposed to you to go away?—It was proposed that I should not appear. I had no personal feelings against the accused; they were most of them perfect strangers to me; and those I did know I had only a casual acquaintance with. I had no private malice, nor any inducement of any kind, to appear against them; nor should I have done so, unless I had been compelled to do so by the Queen's officers. My brother has stated that what I said in evidence was visionary and imaginary: but what can any man tell who is not present when the matter takes place. I took this document to General Napier; and I said to General Napier "So and so has taken place; I have no concealment from you; I will not go one inch backwards or forwards from what I have said. I have but one story to tell." And I gave him the letter which I now hold in my hand.

5284. Do you agree with your brother's statement that you proposed the writing of that letter?—No; I neither proposed nor entered into it.

5285. That appears to be the only point in which your account differs from that of Mr. Harry Dobrée?—I do not admit we agree. This I have no doubt was done from the kindest

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motives; but my feelings were that, having made such a statement, and being convinced of the truth of it, I would not go back a single inch to avoid anything which might occur.

5286. In that case, how was it worth your while to take the paper at all?—He gave me the paper, and said, that was what he wished to have done; and I said "I will not do it." I never asked the General to write the letter at all.

5287. (To Mr. *Harry Dobrée*). Was that letter written at Mr. Daniel Dobrée's house, or did you take it with you ready written?—It was written at his house on his table.

5288. (To the Rev. *Daniel Dobrée*). Do you agree in that?—I think it was: I cannot be positive.

5289. Mr. *Harry Dobrée.* When I went to my brother, I had no idea of writing a letter; but urging him, as I did, to drop the proceedings and get rid of it, he said: "My dear fellow, what can I do? I am so advanced in it that I cannot drop it." I said "That is very true." And it was on his assurance that he was sure that the Governor was ready to do everything he could to serve him, that I said: "Then the best thing you could do is to get him to write a letter, something of that kind, to procure the proceedings to be dropt." He said: "The Governor wished him well, and would do any thing to serve him or to help him." From what he said, I hoped he would have the power to carry that letter through for the sake of my brother and his family and every body connected with him.

5290. The Rev. *Daniel Dobrée.* My brother has made use of some rather strong expressions; that he wished me to give up the prosecution for the sake of myself, my family, and every body connected with me. If all I have said is visionary, how came young Frederic Mourant to write to his brother in England, who is a clergyman at Norwich, and tell him precisely the same thing that he told me. Had I the influence to make that unfortunate boy write to his brother at Norwich and tell him almost precisely the same thing that he told me?

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Mr. *James Barbet*, the Queen's Sergeant, examined.

Mr. James Barbet, Queen's Sergeant.

5291. Are you the Queen's Sergeant?—Yes. I had the charge of the Court on the day alluded to, especially the witnesses. The course pursued was not the ordinary one of having them all remain in Court; but, at the request either of the Crown lawyers, or of the counsel for the prisoner, I cannot now recollect which,——

5292. The *Contrôle.* It was at the request of Mr. Falla, the counsel for the prisoners.

5293. Mr. *Barbet.* At his request, all the witnesses without distinction were taken into an adjoining room.

5294. All together?—Yes. There are no means of separating them here. They were then called in, one by one; and, after each had deposed, he remained in the Court. After a while, I was told that some who had not been examined were loitering about the door.

5295. They had got out of your room?—Yes; I instantly went to the room and found some two or three missing.

5296. Were they witnesses for the Crown or for the defence?—Both. I told those who were present that they were not to leave the room, that some were already gone. I then locked the door till I could collect the stragglers. When I had got them I let them in. I did not lock the door; but I appointed some one to help me watch the room. On my going in Mr. Dobrée did protest against having been locked up.

5297. The Rev. *Daniel Dobrée.* After being so locked up, and kept from eight o'clock till five in the evening without refreshment, I was brought in here. The first thing I saw was several witnesses for the defence sitting right behind the accused.

5298. Mr. *Barbet.* They did not return into the room, when they had been examined.

5299. (To Mr. *Barbet.*) The witnesses for the prosecution are examined first, are not they?—Yes.

5300. Then those witnesses for the defence could not have been examined when Mr. Dobrée came into the Court?—I have no knowledge of the circumstance at all.

5301. The *Contrôle.* The witnesses were made to retire upon the first trial; they were not made to retire upon the subsequent trial.

5302. Mr. *John Waterman.* The sergeant of the Court has declared to you that the witnesses were all locked up in the room adjoining at the Court house; it is quite false. While the Crown witnesses were locked up, the defendant's witnesses were in court or where they pleased.

5303. (To Mr. *Waterman.*) Of which trial are you speaking?—On the second day. On the trial of Mr. Rougier, Mr. St. John Mansell, and Mr. Le Pelley. They were all tried on the same day; two on one count and one on the other.

5304. Mr. *Barbet.* I am satisfied that the witnesses for the prosecution and for the defence were in the room. I believe Mr. Jones, who is a member of the town Douzaine, was a witness for one of the prisoners. He will state whether he was in the room.

5305. Mr. *John Jones.* I have this moment come into the Court house; and, hearing what was stated, I mentioned to the sergeant that I was one of the witnesses in the case for the prisoners. We were all required by the Court to leave the court room. I was, for a considerable time, in a room there together with Mr. Dobrée and Mr. Waterman and his wife also.

5306. Was this at the trial when the parties were acquitted, or at the first investigation?—It was at the trial, when they were acquitted.

5307. (To Mr. *Carré*). The Commissioners understand the practice of the Court is to order all the witnesses out, if it is required, and to let them in as they are examined. If the contrary took place, it was an irregularity which should not have taken place?—Certainly; it is the first time that this has come to the knowledge of the Court.

5308. The Rev. *Daniel Dobrée.* I protested against it to the Queen's Procureur at the time.

5309. Mr. *Harry Dobrée.* I would wish to make one observation touching the project for a letter, which has been exhibited. A gentleman's name has been brought into the discussion,

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the name of Mr. Utermarck, the father of the present Solicitor General. It is due to him to state why his name appears. He is a first cousin of ours, and has always been looked upon in the light of an elder brother; and I was induced to request my brother to meet him at his house in hopes that, from the influence which Mr. Utermarck, the father, has always had over us, he would join his influence with mine to induce my brother to adopt any course which would put an end to the situation in which I thought he was placed.

5310. (To the *Bailiff.*) It has been stated that a Jurat would be removable on being appointed Bailiff. Is that so?—He vacates his office.

5311. (To Mr. *Carré.*) The Lieutenant Bailiff officiates for the Bailiff in his absence, does not he?—Yes.

5312. In case of his so officiating, does he lose his vote as Jurat?—Yes; he is placed in exactly the same position as the Bailiff; and it would be only in case of an equality of voices that he would have any vote in the judgment given.

5313. Is there more than one gentleman appointed as Lieutenant Bailiff?—No. The Bailiff's commission gives him power to appoint more; but it is not generally done.

5314. The *Bailiff.* There was a time when the Bailiff was an officer, not resident in the Island, and there was then a Lieutenant Bailiff, who occupied precisely the place of the Bailiff.

*Charles De Jersey,* Esq., Procureur de la Reine, further examined:

Charles De Jersey, Esq., Procureur de la Reine.

5315. The *Procureur.* With respect to the election of the Jurats, the Royal Commissioners of 1607, in page 46 of the printed book, express themselves thus: "We do order that the Governor, or his Lieutenant, being first made acquainted therewith, the said Bailiff and Jurats, with the constables and douzaines of every parish, who are the most trusted with all other public causes of their several parishes, upon eight days' warning at the least, given by the Bailiff, being assembled, shall have voices in the said election; and whosoever is nominated by the greater part of them, the Bailiff shall pronounce and declare him to be lawfully chosen, and thereupon shall cause him to be admitted in such manner and form as heretofore hath been accustomed."

*The Réglement of the Commissioners was read at length as follows.*

## CLAIMS OF THE PARISH OF ST. PETER-PORT.

### *St. Peter Port's Claim to a Third Part in the Election of Officers.*

*Item.*—They complain against the Bailiff and Jurats that, whereas, of time out of mind, this said town and parish of St. Peter Port did stand, in all elections of public persons and other affairs that do concern the state of the Isle, for the third, even as the said parish sustained the third part of all public charges in subsidies and taxations; the said Bailiff and Jurats have lately, in the proceeding to public elections, deprived the same parish of her ancient preferment and advantage, reducing her to the same order and degree that the lesser parishes of the Isle holdeth, although their said town and parish affordeth ten times more able and sufficient men every way, and continueth still in her accustomed charge. The complainants' desire, therefore, is to be restored to their ancient privileges and pre-eminence above all other parishes.

Having made diligent inquiry touching these privileges claimed by the said parish, we have been informed by the more part of the Jurats and by the greater part of all others with whom we have conferred hereof, that there was never any such privileges or pre-eminence allowed to the said parish. Likewise, we find by some ancient customs and orders, which we have seen, written and recorded to have been done in the time of King Edward III. and of King John, that, in those times, the customs of choosing the Jurats, in both the Isles of Guernsey and Jersey was per ministros domini regis et optimates patriæ. Moreover, we find in the precept of assize, made by the oaths of twelve sworn men of every parish, in the year 1331, that the inhabitants and dwellers in this Isle, they and their predecessors, have used to choose and elect their Jurats of themselves, such as were the most notable, discreet, wise, true and rich men of the said Isle, without attributing or mentioning any dignity or pre-eminence therein, due to any one parish more than to another. And whereas the foresaid parish, to obtain the said privilege, as a principal argument, allege that they sustain the third part of all public charges in subsidies and taxations, we think that no sufficient motive or reason to induce the same; but rather are of opinion that they are more favoured than burthened thereby; for, as the general report and fame goeth, the inhabitants of their parish are, in worldly substance, more worth than the inhabitants of any three of the other parishes in this Island; so that if they were valued and esteemed in their payment according to their own wealth and worth, as others of this Island are, they should sustain a far greater part in all subsidies and taxations than now they do; whereupon we are induced to think that there is no such privilege in election of officers due unto the inhabitants of the parish of St. Peter Port, and therefore (the rather because all inovations are dangerous in every commonwealth), and being desirous to reduce the same as near as we may, to the ancient use before expressed, and to avoid all disorderly tumults, indiscretions and confusions which do usually accompany the greatest multitudes in elections. With the consent of the Bailiff and Jurats, we do order that the Governor or his Lieutenant, being first made acquainted therewith, the said Bailiff and Jurats, with the Constables and Dozens of every parish, who are the most trusted with all other public causes of their several parishes (upon eight days warning at the least, given by the Bailiff,) being assembled, shall have voices in the said election, and whosoever is nominated by the greater part of them, the Bailiff shall pronounce and declare him to be lawfully chosen, and thereupon shall cause him to be admitted in such manner and form as heretofore hath been accustomed.

5316. This is the law which now regulates the election of Jurats, is it?—Yes.

5317. The *Bailiff.* The whole of that order of the Commissioners bears upon the point, adis consistent with the Précepte d'Assize, and also with the law, as stated in the placita de quo warranto, before the Justices in Eyre, in the 2nd of Edward the Second, 1308, published by the Record Commissioners, pages 825 and 826.*

* The following is the passage referred to. "Et Communitas veniunt et dicunt quod ipsi et eorum progetores insulani hic, à tempore quo memoria non existit, semper usi fuerint habendis duodecim juratis de seipsis, qui eligi debent per ministros domini Regis et optimates patriæ, cum opus fuerit, scilicet post mortem unius eorum alter fide dignus, similiter si quis eorum convictus fuisset à casu de falsitate, loco suo debet alter substitui."

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5318. Mr. *MacCulloch.* In the extent of Edward the Third, under the head of "Les perquisitions de la Cour de toute l'Ile," is the following. "Les perquisitions de la Cour de toute l'Isle vaut communement, tous les ans, en toutes choses qui en issent et en procèdent cent livres tournois, aucune fois plus aucunefois moins; c'est assavoir que les cours doyvent estre tenues par le Bailiff, esleu de la partie de nostre Sire le Roy, et est accoustumé qu'il soit des tenans résidens en la dite Isle, pour ce qu'il est tenu de respondre devant les Justiciers estant en la dite Isle de tous cas touchant la couronne, et ce en la présence de xij. jurés, ou de vij. au moins, pourtant que tous cas escheants ès dites Cours doyvent estre jugez et recordés par la circonspection d'iceulx Jurés et avec ce tous les marchez d'icelles cours taxez. Et ainsy icelluy Bailiff ne peut faire aucun jugement ou record sans la présence d'iceulx Jurez, par ainsy qu'ils ayent reconnoissance de tous les cas là escheans, à faire droit jugement et vray record. Laquelle cour, c'est assavoir, de chattel, debtes et transgressions, doit estre tenue de sepmaine en sepmaine, et pour estrangers de jour en jour, sy necessité est, et d'héritages de xv. jours en xv. jours. Somme cent livres tournois."

5319. (To Mr. *Lefebvre*, Greffier.) Will you now furnish the Commissioners with the oaths which are taken by the different officers of the Court?

*The same are put in and are as follow.*

*Serment du Baillif.*

Vous jurez et promettez, sur la foi et le serment que vous devez à Dieu et sur les Saints Evangiles de Jesus Christ, que touchez de votre main dextre, que vous exercerez bien et fidélement la charge de Baillif de cette Ile de Guernesey; que vous maintiendrez l'avancement de la glorie de Dieu, l'honneur de Sa Majesté, notre Souveraine Dame, Victoria, par la grâce de Dieu, Reine du royaume uni de la Grande Bretagne et d'Irlande, Défenseure de la Foi, et qu'à Sa dite Majesté vous serez vrai et loyal sujet; que vous garderez et maintiendrez bien et loyalement et de tout votre pouvoir toutes les loix, libertés, usages et anciennes coûtumes de cette Ile en la compagnie des Jurés de cette Ile, et exécuterez et accomplirez les regards, records et jugemens faits et déclarés par les dits Jurés, et que, si par erreur ou autrement vous faisiez aucune défaute ou trépas à l'encontre, vous vous redresserez incontinent selon l'avis et bonne opinion des dits Jurés; que vous ne ferez sceller aucunes lettres qui ne soient droites et juridiques, et que, de toutes ventes, obligations, sentences ou termes de rôle qui seront faits par devant vous, vous en baillerez justes relations et records. Vous promettez ainsi.

Ainsi Dieu vous aide.

Dieu sauve la Reine.

5320. *Serment du Lieutenant Baillif.*

Vous jurez et promettez, sur la foi et le serment que vous devez à Dieu, que bien et fidélement vous exercerez la charge de Lieutenant Baillif comme à telle charge appartient, et conformément aux devoirs qui sont imposés au Baillif de cette Ile, dans le serment qui vient de vous être lû.

Ainsi Dieu vous aide.

Dieu sauve la Reine.

5321. *Serment des Jurés.*

Vous jurez et promettez, sur la foi et le serment que vous devez à Dieu, et sur le peril et damnation de votre âme et sur les saints Evangiles de Jesus Christ que touchez de votre main dextre, que vous exercerez bien et fidélement la charge et office de Juré de la Cour Royale de cette Ile de Guernesey; que vous maintiendrez l'avancement de la gloire de Dieu, l'honneur de Sa Majesté, notre Souveraine, par la grâce de Dieu, Reine du Royaume uni de la Grande Bretagne et d'Irlande, Défenseure de la Foi, et en ses pays et dominions tant aux causes ecclésiastiques que temporelles suprème Gouverneur; qu'à Sa dite Majesté vous serez vrai et loyal sujet, tant au fait ecclésiastique qu'au temporel, renonçant aux faits et ordonnances du Pape et à toute puissance et jurisdiction foraine; que vous maintiendrez justement la république de cette Ile, et garderez et entretiendrez de tout votre pouvoir les loix, libertés, coûtumes, et autres usages de droit accoûtumés en cette Ile; que vous assisterez et aiderez, avec le Baillif ou son Lieutenant, en la compagnie d'autres Jurés vos frères, en cours ordinaires, à votre tour, et en cours extraordinaires, toutes fois et quantes qu'en heure due en serez requis à rendre bonne et loyale justice entre Sa dite Majesté et ses sujets, et de partie à partie, tant au petit qu'au grand, et principalement aux veuves, et orphelins, sans aucun supporter ou favoriser par don, promesse, amour, acception de personne ou autrement; que vous n'assisterez à sceller aucunes lettres qui ne soyent droites et juridiques, et que de toutes ventes, obligations, sentences ou termes de rôle qui seront faits par devant vous, vous en baillerez justes relations et records. Et si, paraventure vous aviez erré, fût par ignorance ou autrement, vous promettez de vous rectifier et de vous ranger à la plus saine opinion de vos frères. Vous promettez ainsi.

Ainsi Dieu vous aide.

Dieu sauve la Reine.

5322. *Serment du Procureur et Contrôle.*

Vous jurez et promettez, par la foi et le serment que vous devez à Dieu et sur le peril et damnation de votre âme et par la Sainte Loi et Evangile de Dieu contenues en ce Livre qu'avez touché de votre main dextre, premièrement que vous maintiendrez l'avancement de la gloire de Dieu, l'honneur de la Majesté de notre Souveraine Dame, Victoria, par la grâce de Dieu, Reine de la Grande Bretagne et d'Irelande, Deffenseure de la foi, &c., et en Ses Pais et Dominions, tant aux causes ecclésiastiques que temporelles suprème Gouverneur; qu'à icelle Majesté vous serez vrai et loyal sujet, tant aux faits ecclésiastiques que temporels, renonçant aux ordonnances et faits du Pape et à tout pouvoir et juridiction foraine; que vous serez obéïssant à Justice et aux actes et ordonnances d'icelle et en verrez l'exécution, et que vous maintiendrez justement la république de cette Isle, et garderez et observerez les loix droits et anciennes libertez, et usages accoûtumez selon droit en cette dite Isle; que vous poursuivrez et deffendrez les droits et causes de Sa Majesté la Reine de tout votre pouvoir justes et droiturières, tant en meuble qu'en héritage, et si, aucunement il advient qu'il y ait en vous aucune faute en votre

charge, soit par ignorance ou autrement, vous promettez d'être redressé par Monsieur le Baillif et la Justice, et généralement, vous promettez d'exercer droitement, sans fraude ni déception l'office et charge de Procureur et de Contrôle de la dite Majesté en cette Isle, ainsi qu'à telle office appartient, comme vrai et loyal, en la dite charge, est de dire et faire. [redacted]

Dieu sauve la Reine.

5323. The *Bailiff*. With respect to the office of Bailiff, there is a power belonging to the Bailiff adversely to the Court of suspending a judgment. In case of a judgment being given by the Jurats which he does not approve of in point of law, he may suspend it. And it appears to be understood that it may be suspended for not more than forty days. Tracing that historically, I find in Terrien, Lib. x. ch. 1, page 404: "Si le Justicier apperçoit que les Jugeurs desvoyent par ignorance ou par malice, jaçoit ce que tous en un se consentẽt, il le doit delayer jusques *aux autres Assises,* esquelles il se doit tenir au conseil de la greigneure et plus sage partie." Aux autres Assizes implies the lapse of forty days: in Normandy the assizes being holden from forty days to forty days. This is commented on in the corresponding chapter of Mr. Le Marchant's Book. "Par les Articles 7, 9, 10, et 11, lorsque les opinions sont différentes sur une cause, si le Bailiff ou autre Juge qui préside juge que la pluralité des assesseurs ait opiné contre droit, il peut d'office remettre la cause jusques à la prochaine Cour, pourveu que la cause ne requierre telle expédition que le délay d'icelle apportast notable dommage; mais, si tous les assesseurs s'accordent en une opinion, le Juge ne peut différer de donner jugement sans dire la raison pourquoy."

The subject also came before the Commissioners in 1607. It is in the Réglemens, pages 31–32.

*The general Complaint of the People against His Majesty's Justices of the Isle of Guernsey, the Bailiff and Jurats especially.*

4. *Item.* They complain that the Bailiff taketh this liberty, that when a matter hath passed the opinions of the Jurats, if they please him not, he will argue upon the said opinions, and labour by all means possible to get them changed, and persuade the said Jurats to his purpose; which if he be not able to do, the said Bailiff will sometimes break up the Court and keep the sentence unpronounced, whereby much injustice is wrought. Their humble suit is for remedy,—that the Bailiff, after the parties or their advocates have pleaded a cause, do but summarily propound unto the Jurats the substance of the plea in the presence of the parties, and then, either in the presence or absence of the said parties as to the Court shall seem best, take by order the Jurat's opinion, from one to the other; and according to the plurality, to pronounce sentence immediately; or else, if the cause rest it doubtful or the greater number of opinions is manifestly repugnant to the law, that the said Bailiff show the points in doubt or of repugnancy, the which be presently noted by the Clerk, and, within se'nnight or fortnight at the most, by a sufficient number of Jurats be resolved, and, according to the plurality of opinions, sentence be pronounced by the said Bailiff, without any further delay. Against the Bailiff for want of justice.

"For so much as we are credibly informed by the Bailiff and Jurats, in their answer which we have received in writing, that the parties who made this complaint intended and meant the same against Lewes Devick, deceased, late Bailiff: and for that all the Jurats, whom we ought to credit herein (before any private person), do attest and affirm that they never found such a fault in the now Bailiff, we think not fit, in any sort, to censure him therefore. Yet, because we think it probable that such some abuse, to the grievance of His Majesty's poor subjects and to the impeaching of common justice, may be offered hereafter, we do order that, after any cause hath been duly and orderly pleaded by the procurators and advocates, or otherwise, if the Bailiff and Jurats please, they also may argue the same, either privately or publicly as to them shall seem best; but when the cause is once pleaded and argued, all necessary delations and formalities by their style of proceeding requisite and anciently accustomed being past, so that the cause is ready to be sentenced, and the Bailiff to that end propoundeth the same to the Jurats, and thereupon receiveth their several voices and opinions in open Court, he shall not, from that time, delay to pronounce and give the sentence, above forty days at the most; and then, plainly, fairly and quietly, without gainsaying or opposing himself against any Jurat's opinion, he shall give and pronounce the said sentence for him on whose part the greatest number of their voices concurred and were openly delivered; and as we think it meet that the Jurats should not interrupt one another whilst they are delivering of their opinions, so we require that neither they nor any of them nor any other person whomsoever presume to interrupt the Bailiff, or to offer any interposition of speech unto him, whilst that he is giving and pronouncing of the said sentence or after the same, upon pain of such an *amende* or a pecuniary mulct to be inflicted and levied upon him that offereth the same, as to the more part of the Jurats shall seem good, saving unto all parties the benefit of appealing so far forth as the laws, orders, and customs of the Isle do or shall permit."

I will observe, as connected with this, that the Bailiff is not the Bailiff of the Royal Court, but he is the Bailiff of the Island. He is the officer of the Crown; and, as an incident to his office, he is the President of the Court, pretty nearly the same as in a county of England the Sheriff's right of presidency in the County Court is incidental to his office of Sheriff. I would call the attention of the Commissioners to an Order in Council of the 21st of November, 1673, which has reference to the office of Bailiff, and to the office of Jurats.

*The same was read as follows.*

5324. At the Court at Whitehall, the 21st of November, 1673.

*Present*—The King's Most Excellent Majesty, His Highness Prince Rupert, Lord Keeper, Lord Treasurer, Lord Privy Seal, Duke of Buckingham, Duke of Monmouth, Earl of Ogle, Earl of Northampton, Earl of Bath, Earl of Carlisle, Earl of Craven, Earl of Carbery, Viscount Faucon berg, Lord Bishop of London, Lord Maynard, Lord Newport, Mr. Vice Chamberlain, Mr. Secretary Coventry, Mr. Chancellor of the Duchy, Master of the Ordnance, Mr. Seymour.

Whereas Amice Andros, Esq., Bayliff of His Majesty's Island of Guernsey, did y^e^ 7th of this instant November, humbly offer to His Mat^y^ in Councill severall proposals for regulating his Mat^ys^ Court Royall of the said Island in some particulars, and for the good and quiet of His Mat^ys^ subjects there, which being then referred to the consideration of the Lords Comittees of this Board for the affaires of Guernsey, their Lo^ps^, accordingly, considered and amended the same in some particulars, and did this day report to His Ma^ty^ in Council y^e^ ensuing proposals, viz.:

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1. That the Jurats and other Court officers, in their turns, attend the Bayliff, or his Lieutenant in his absence, in their chambers and from thence to the Bench; and that they doe not depart thence w^th^out leave; and that they bear due respect to him as representing His Mat^ys^ person, and being his chief Minister of Justice there, but especially in the Court, or executing his office. The offender to be suspended untill he has excused himself for it before the Court, if he be a Jurat or officer. If otherwise, to be imprisoned till he hath asked pardon and paid the fine that shal bee laid upon him according to y^e^ nature of y^e^ offence.

2. That no Jurat pleador give councill in any cause but his owne: and, if he presume to doe it, that he loose his vote for the time. Neverthelesse, if a Jurat be not satisfied concerning any point belonging to the cause in hand, and shall desire to be better informed therein, to the end he may give right judgement in it, the Judge shall cause him to receive satisfaction.

3. That the Jurats deliver their opinions, not arbitrarily, but according to the lawes and custome of the Island as near as may be.

4. That none retain more than one advocate to plead or speak in a cause; and that neither the partys nor advocates interrupt one another in pleading: but that the plaintiff first propose his demand, silence being kept in the meanwhile, then the defendant make his answer in like manner, and so forward till the other replies and duplies, if need be; he that breaks this order, if he be an advocate, to be fined at the discretion of the Judge for the first time, to be suspended for a month for the second time, and to be deposed for the third time; if a private person, to be fined and punished as the cause shall require.

5. That no Jurat or Jurats presume to administer an oath, except he or they be authorized to do it, under the penalty of suspension for three months, if for a small matter, or to incur a premunire to be judged by His Mat^y^ and Council if the cause be of greater concern.

6. That upon the election of Jurats whosoever shall endeavour by bribes, feasting, drinking, promises, threats or other indirect means to corrupt or win any of the electors, if a pretender to be chosen, he shall forfeit his right to the said election; if any of the electors, shall forfeit his vote and be fined for every such attempt ten livres tournois. If any other, to be fined ten livres for every such attempt, and farther censured as the cause shall require, the said fines to be applied to pious and charitable uses.

Which said proposals His Majesty was pleased to confirm and approve of in every particular, and did order that they be transmitted to the said Island of Guernsey to be put in due execution, and from thenceforward punctually observed by all whom it may concern.

(Signed) JOHN NICHOLLAS.

5325. The *Procureur.* The Bailiff's power to suspend a judgment for forty days has been repeatedly acted upon in civil matters; but I know no case in which it has been done in criminal matters.

5326. The *Contrôle.* Both in Terrien and in the Regulations of the Commissioners, the power is only referred to in connexion with civil causes.

5327. (To the *Procureur*). With respect to proceedings for penalties for the infringement of Ordonnances, or Acts of Parliament, you say, in your answer, they are entered either by both or by one of the Queen's law officers?—Yes; all actions for penalties for the infringement of Acts of Parliament, or Ordonnances, are entered either by the Queen's law officers or by one of them, or by an informer to whom one of the Crown officers is adjoined.

5328. There is no intervention of a constable?—None. He may be the informer, of course.

5329. Has the Court the power to refuse such an accusation?—No; that accusation is entered without giving any notice of it at all to the Court.

5330. Is it brought before the Cour en Corps?—Yes; but by an Order in Council of December, 1844, if the penalty does not exceed thirty livres, it may be brought before the Cour Ordinaire.

5331. Will you state what takes place under those proceedings till you bring them to the same position as other cases?—The proceedings are in this mode. The first proceeding is a summons, signed by the Crown lawyers, or usually signed by that Crown lawyer who acts. The summons is sent to the person who has infringed the Ordonnance, or the Act of Parliament, to see himself adjudged to the payment of so much, being the amount of the penalty, by such a clause of an Act of Parliament, or such an article of an Ordonnance.

5332. How many days does the summons run?—That summons ought, strictly speaking, to be served on the Thursday; but in practice it is sometimes only served on the Friday.

5333. For the Saturday?—Yes. Then, if the party appears, the witnesses are ordered. There is an acte of Court passed ordering the witnesses; or, if there be an acknowledgment by the party accused, he may be amerced; or, if there be any error in the manner in which the summons is drawn up, the party pursuing may be silenced.

5334. Assuming the penalty is under thirty livres, so that it could come before the Cour du Quartier, are the proceedings the same?—Yes, precisely; except that, under thirty livres, by a new Order in Council, the witnesses may be had the first day.

5335. Under thirty livres the case would be treated summarily?—Yes.

5336. If above thirty livres, the witnesses are summoned for a future day?—If it is above thirty livres, the defendant may plead before the witnesses are ordered; he may plead that the action is badly entered. In short, he may plead any estoppel that he pleases against the action; and, if the Court are of opinion that the action should go on, they may order the witnesses; or, in those cases where the defendant may acknowledge having infringed the Ordonnance or Act of Parliament, they may condemn him. If witnesses are ordered, the cause comes on on a future day; the witnesses are heard *vivâ voce;* and the judgment is given.

5337. Like a procés ordinaire?—Yes, precisely.

5338. Are the arrangements as to hearing the prisoner's counsel and the examination and cross-examination of the witnesses the same?—Yes. The counsel of the person who is actioned speaks first. The witnesses of the prosecutor are first examined, and then the witnesses of the defendant. Then the defendant's counsel speaks, and is replied to by the Crown lawyers; and judgment is given.

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5339. In those cases, do the Crown officers consider themselves as strictly counsel for all parties, as they do in ordinary criminal cases?—I should be loth to say that they do; I should say, not so much so. There they act more like advocates.

5340. They represent one party?—Yes, certainly they do. Perhaps I ought to make this remark. When there is an informer, they certainly act more as they would in a civil case; they consider the informer as their client. In case there was no informer, they would probably also consider the Crown their client.

5341. The informer has an interest in the penalty, has not he?—Yes.

5342. In the great majority of instances is there an informer?—Yes. Perhaps I ought to add that, in several cases in which the informer's name does not appear, there is an informer: but, by the law of Terrien, if the defendant gains his cause, he has a right to insist upon the Crown lawyers naming the informer or paying the costs.

5343. That is in order that he may go for costs against the informer?—Yes.

5344. The passage in Terrien, to which you point, would rather look as if it had reference to all criminal cases?—Yes. Originally there was in all cases, even for the highest crimes, or at least there might be, a partie civile. The Procureur du Roi, as you will find in Terrien, never pays costs.

5345. With respect to the fines, are they generally to the Crown?—Not always. Usually, indeed I may say always, there is a proportion to the Crown and a proportion to the informer; and, formerly, there was a proportion given to the poor of the parish.

5346. Do you recollect any instance of a fine, imposed simply as a punishment by the Court, in which it did not all go to the Crown?—Yes; there was Captain Burdett's case. In that case, and probably in others, the fines have not been all given to the Crown: but in that case, if I recollect right, a proportion of the fine was given to the States.

5347. Mr. *De Courcy*. That was in 1806.

5348. (To the *Procureur*). What was the amount of the fine?—One hundred pounds: fifty pounds was given to the Crown and fifty to the States. In that case, if I recollect right, though I only speak from memory, the gentleman to whom the fine was awarded was my uncle; he was Lieutenant Bailiff of this Court.

5349. What was the accusation?—He was Lieutenant Bailiff; and he had been grossly insulted by Captain Burdett.

5350. It was not a case en adjonction?—No. I rather think that, in that case, the fine was altogether remitted to Captain Burdett finally; that is, the Crown, or the then Governor, remitted his proportion; and I should suppose that the States remitted their's.

5351. Is it legal so to divide the fine?—I think in the Queen's Court any fine for any offence ought to go to the Crown. If I gave conclusions for a fine, au criminel, naturally I should give it in favour of the Crown.

5352. Do you think you have the power to give it in any other way?—I should doubt it.

5353. Mr. *Le Retilley*. All fines must certainly go to the Crown.

5354. (To the *Procureur*). You think, in the case of a fine for a criminal offence, the Court would have no power to appropriate it except to the Queen?—Certainly.

5355. In the case of an Ordonnance, or an Act of Parliament, it would be stated where the fine was to go?—Certainly.

5356. Something has been said about the Enquête as a mode of criminal proceeding; will you explain that?—We have two enquêtes; I would distinguish them by the grande enquête, and petite enquête. The grande enquête is this. When a crime has been committed and the perpetrator is unknown, the Court has a right to hold an enquête. Sometimes there is an acte of Court made, on the application of the Crown officers; and sometimes there is none. Upon that, orders are given; and all those who are supposed, directly or indirectly, to know something about it, are brought forward before the Court, and are obliged to state what they know.

5357. Does this take place whether the Crown officers have applied or not?—There is always permission given by the Court, either by an acte or verbally, to hold an enquête.

5358. Are the Crown officers made parties?—I cannot say they are made parties legally: they are informed of it.

5359. If we understand you, a grande enquête may take place, either by a formal acte of Court permitting the officers of the Crown to have the enquête, or it may take place by the Court setting itself in motion, only giving information to the officers?—The constable and the officers may bring witnesses before the Court at once, and request the Court to hold an enquête; or, if the Court know anything about the crime committed, an enquête may be held to discover who committed the crime.

5360. The *Bailiff*. That which the Commissioners have taken as the origin of the proceeding is the result. The matter having been gone into to ascertain whether anything can be found out, the Court, thinking there is ground of accusation against some one, permits the inquiry.

5361. The *Procureur*. The mode of proceeding will be best shown by an example. A ship was lost near this Island; there was a vast deal of cochineal and other very valuable goods on board. A great quantity floated off; and a great deal was stolen. It was known that cochineal had been stolen, and many other things; but the authors of those robberies were not known. An enquête was held; and, I suppose, probably some forty or fifty persons were examined, in order to find out those who had anything to do with this robbery. This is the grande enquête.

5362. What was done there?—I believe, in that case, the Crown lawyers, at least those who conducted the inquiry, were unfortunate; and they could not obtain sufficient evidence against any one person to try him.

5363. What is the first step taken in point of form? Is it by application to the Court?

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Does the Procureur make a formal demand to the Court for an enquête?—He does in case a complaint is made to him: but sometimes the complaint may have been made to the Bailiff; and then the Bailiff mentions it; and, after the examination of a few witnesses, an acte of Court for the enquête is given to the Crown lawyers. It is then said to be octroyée by the Court.

5364. The enquête is always granted upon some evidence of a crime having been committed?—Yes.

5365. The first step is evidence of the fact of the crime being committed. That being established, is an application made by the Crown officers for an enquête?—That is the usual mode.

5366. It is not completely in motion till the Crown officers have got the permission for an enquête?—Certainly not.

5367. Is the evidence received before the Cour du Quartier, or before the Cour en Corps?—It is usually received before the Cour du Quartier; but in cases of great importance a greater number of magistrates attend. Afterwards, the constables are directed to bring all such persons before the Court as they may suppose likely to know something of the case; those witnesses are brought forward, and are called témoins d'enquête. Formerly the oath was different from that taken by the other witnesses; but now it is the same. At the same time they are told that they are not obliged to criminate themselves. The number of witnesses is unlimited. In one particular case I suppose we examined fifty.

5368. Is it not the case that, in all preliminary proceedings, you are not confined in your number of witnesses?—It is so.

5369. Who presides at the enquête?—The Bailiff or his Lieutenant.

5370. With Jurats?—Yes, with two or more Jurats.

5371. Is it au secret?—Yes.

5372. What is the result?—If by the grand enquête there appears proof against any particular individual, the constable has orders to bring forward that individual at a future day. On the day the individual is brought forward, a petite enquête takes place; that is to say, another examination of the witnesses, a certain number of whom are brought forward precisely as though there had been an accusation in the first place; but the second time the witnesses are only examined against that individual.

5373. So that the grande enquête does not forward the case a single stage, but only adds a preliminary step?—Yes; the grande enquête is for the mere purpose of discovering those who may have been guilty of an offence.

5374. The *Bailiff*. It partakes of the nature of a Coroner's inquest.

5375. An inquiry was had as to an alleged conspiracy against the Lieutenant Governor; was that in the nature of an enquête?—Yes; that was a proceeding by grande enquête.

5376. (To the *Procureur*.) At the conclusion of the evidence before the enquête, does the Procureur or the other Crown officer make any conclusions pointing the evidence of guilt against a particular individual?—Not at the grande enquête. Neither at the one or the other have they anything strictly to do or to say. Formerly they were not present: now they are present and give their opinion; but they do not draw their conclusions either at the grande enquête or petite enquête.

5377. There is no address made to the Court, saying "the result of this evidence is that it tends to point out A. B. as the person who has committed the crime?"—In private, when the Court consults the Crown lawyers, they give their opinion, just as they do when a person is committed; but, when a person is committed, they are so little supposed to be present, that they are not mentioned in the acte. This appears from Terrien Lib. xii. chap. xxxii.

*Des décrets des informations, tant de prinse de corps qu' adiournement personnel & autres prouisions.* *François*, 1539.

Sitost que la plainte d'aucuns crimes, excez et malefices aura esté faite, ou que les Juges en auront esté advertis, ils en informeront bien & diligemment: pour, incõtinent après l'information faite, cõmuniquer à nostre Procureur, et veues ses conclusions (qu'il sera tenu promptemẽt mettre au bas desdites informations, sans aucun salaire en prendre) estre decerné par le Juge telle provision de Justice qu'il verra estre à faire selon l'exigence du cas.

5378. The *Bailiff*. In point of fact they give their opinions on points of law: but, in the strict sense of the word, they do not give their *conclusions*.

5379. (To the *Bailiff*.) The conclusions, in formal and strict sense, never take place except upon the trial?—No; but the habit has grown up here of having the assistance of the Crown officers.

5380. (To the *Procureur*.) What is the particular form of the decision of the Court in the grande enquête?—I rather apprehend that, generally speaking, when the grande enquête is held, there is no judgment given, because it would be necessary to point out the person who is supposed to be guilty.

5381. Is not that the object of the grande enquête, to discover the particular person?—Yes. But I do not, at this moment, recollect any old decision in which, after l'octroy had been given, a judgment of the Court has been given authorizing any particular person to be prosecuted. If any particular person is pointed out, orders are given to the constable to bring him forward on a particular occasion. That will be done verbally, not by means of an acte of the Court.

5382. The *Contrôle*. There is no record of the holding of the enquête. In most cases there is an acte of Court ordering an enquête to take place, which is recorded. The enquête takes place; but there is no record of that.

5383. The *Procureur*. If it is thought that there is no reason to put a man upon his trial, they make no acte. If, on the contrary, they put him on his trial, there is a committal.

5384. (To the *Procureur*.) Is the evidence preserved which is taken on the grande enquête?—On very important occasions it may have been preserved; but, generally speaking, it is not. I believe that at the Greffe there are one or two instances of it. I can cite one. In the grande enquête

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you hear evidence, as it were, against the public in general, to see who is wrong. I suppose the reason why no acte is made is this, lest the perpetrator should find it out and run away.

5385. The *Contrôle.* The difference between a grande enquête and a petite enquête is that in a grande enquête there is no accuser, in the petite enquête there is.

5386. Mr. *Carré.* With respect to the form in which the record of the proceedings is kept, in ordinary cases no record whatever is kept of any part of the evidence; but some cases have occurred in which the Court has required the Greffier to take notes of the evidence, on account of the important subject before the Court; but they form no part of the proceedings. The case of conspiracy referred to was not a regular grande enquête.

The *Contrôle.* It started with the petite enquête in the first instance.

5387. (To the *Procureur.*) Is the petite enquête always preceded by the grande enquête?—No.

5388. How does the petite enquête arise?—The constable brings a man charged with a crime before the Court; you examine the witnesses to know whether there is any crime which has been committed by that person.

5389. The petite enquête, then, is in fact nothing more than the ordinary proceedings before the committal of a person?—Nothing more.

5390. Mr. *De Courcy.* On the 17th and 18th of October, 1826, I was brought up. I do not know whether it was a grande or petite enquête; however, I had the advantage of being shut up here down stairs, for two days, before the Bailiff and two Jurats. It is right that I should observe that all those gentlemen are gone to their long home, except three, that is Mr. Le Marchant, Sir William Collings, and Mr. Mesurier.

5391. (To Mr. *De Courcy*). You were before the Court, were not you?—Yes; I was sent for, in charge of the Sheriff and the constables, both. On the second day that illustrious personage who has so nobly presided in this Island for a number of years heard there was something extraordinary going on; and he sent for me by his Secretary. The Court did not appear to be so tenacious then of their privileges as they are now; and I was permitted to go to Government House with the Secretary, even without the constable or sheriff with me. During the whole of the proceedings I protested against the illegal act of keeping me there. I said I did not understand their language also, and begged to be permitted to have a person present who would inform me of what was going on. They put a variety of questions to me; but I would answer none till the doors were opened.

5392. Do you happen to know whether witnesses had been examined before you were there questioned?—They were, all in my presence. After I returned from the Government House, I must do them the justice to say they were a little more civil to me. They apprehended there was as high a power as their own. The Bailiff's brother laid hold on me and assaulted me, while I was in the custody of the two officers. On my return I reported the case to the Court; and you will find, by the proceedings of the day, that this person was bound over to keep the peace towards me.

5393. Did you call upon the Crown officers to prosecute?—Afterwards I did; and they would not prosecute; and they told me, moreover, that justice would not be done me if I did; that it would be useless. At the close of the proceedings, when I returned, they gave me to understand that I might go home; and I heard nothing more of it. I want to point out the absurdity of its being stated that an enquête consists of three or four. I would also wish to point out to the Commissioners the degree of relationship which subsists among the members of the Bench. Trial by jury would be very wholesome here.

5394. (To the *Bailiff.*) In the inquiry into the conspiracy the evidence was taken down in writing. Is it the custom that the evidence taken at the grande enquête au secret is read over to the witnesses?

5395. The *Bailiff.* As a question of general practice, the evidence is not taken down in writing at the grande enquête. If it is taken down in writing it is an exception; consequently, there is no rule respecting its being read over.

5396. Mr. *Carré.* If there is any doubt about what a witness has said, it is read over to him.

5397. The Rev. *Daniel Dobrée.* I did ask to have my evidence in the conspiracy case read over to me; and it was refused: I was interrupted every two minutes.

5398. Mr. *De Havilland.* In that case, it was begun by a petite enquête. The Governor, having been invited here because it regarded his person and because it was a matter of great importance, was not satisfied after the examination of the eight or nine witnesses whose names had been given. He said there was much more to be inquired into. Upon that, the Bailiff said, "in that case, it is better to go into a grande enquête." The Court resolved then that every person who was named in the evidence of any witness should be called; and every one whose name seemed to be connected with it was called by the Court. I don't recollect any application made by Mr. Dobrée to have his evidence read to him.

5399. The *Bailiff.* With respect to the case of Burdett, it does not appear from the record of the case that there were any conclusions of the Crown Officers.

5400. The *Greffier.* It is never done in this form of action. They are in fact given in; but they are not mentioned in the record.

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*Henry Tupper,* Esq., (Advocate) examined.

Henry Tupper, Esq., Advocate.

5401. The Commissioners have very different answers to the first question of the second series, with respect to the age at which a person is considered responsible to the criminal law. May it be taken that the law upon the subject is unsettled?—I take it that the law is quite unsettled upon that point: and it depends upon the discretion of the Court whether the individual brought before them evidences such discretion as would warrant a belief of his criminality.

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Henry Tupper, Esq., Advocate.

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5402. The *Bailiff.* I believe that the unsettled state of the law is confined to the age before puberty.

5403. (To Mr. *Tupper.*) Is there any legal definition of what is meant by *doli capax*, or is the capability of committing crime a question for the Court to decide?—It rests in the discretion of the Court. If there were an absence of all idea of right and wrong, I should conceive the Court would not consider the person *doli capax.* But, after the age of twelve in the case of a female or of fourteen in that of a male, it would be assumed that they were responsible to the law. The counsel for the accused could not plead incapacity of age in that case at all. He might plead mental imbecility as an excuse; but want of age would not be considered an exemption.

5404. There is no distinction between a person of twelve or fourteen and a person of twenty? None.

5405. Under twelve or fourteen years, you consider the question of incapacity from defect of age to be open to the discretion of the Court?—Yes.

5406. The *Bailiff.* As far as I can judge, when children have been before the Court, I apprehend the presumption is against the criminality of a person under the age of puberty.

5407. The *Procureur.* In the year 1819, I recollect pleading for a child; and that was the first time, I believe, that the Court ever took it on themselves to declare that a boy under fourteen could be indicted for a crime. Before that, for the first twelve or fourteen years that I was at the bar, I always understood that, by the practice of the Court, no person under the age of puberty could be indicted.

5408. You think it was an established rule of law that no person under the age of fourteen, if a boy, and twelve, if a girl, could be convicted of a crime?—Yes; as the law was then understood.

5409. The *Bailiff.* I am not aware that any child under the age of puberty has been punished since I have been Bailiff.

5410. Mr. *Le Retilley.* The case in 1819 was that of a boy, tried au Grand Criminel for house-breaking: it was jointly with his guardian.

5411. The *Procureur.* I should require the father to give bail that his son should behave well, or send him out of the Island.

5412. Mr. *Le Retilley.* I know there was a defence set up that a child under the age of puberty could not be put en jugement; but the Court overruled the objection. The boy had been, I think, three or four times before the Court au Petit Criminel, and the Court took it that he was *doli capax.*

5413. How old was that boy?—Eleven years old: he was banished, I think.

5414. The *Procureur.* I recollect a case, where the father and the boy were both mentioned in the same acte; and in that case it was ordered, I think, that the father should send the child out of the Island. The date is 29th of June, 1771. In nine cases out of ten, those children rob under the orders of their parents.

5415. May the Commissioners take it that the law is unsettled in its present state upon that point?—Yes.

5416. The *Bailiff.* I think it would be very desirable to adopt the English rule of law. But it would be a great advantage if the Court of Police had the power of punishing children under the age of puberty for crimes which in other cases would be the subject of a mise en accusation.

[Adjourned to to-morrow at half-past nine o'clock.]

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Peter Jeremie, Esq. Advocate.

October 8th, 1846.

*Thursday, 8th October,* 1846.

*Peter Jeremie,* Esq., (Advocate) further examined.

5417. You wish to make some remarks to the Commissioners as to what was said yesterday on the sending of persons to the hospital, do you not?—Yes; I am directed by the treasurer of the hospital to give this explanation. The hospital is parish property under the superintendence of officers annually chosen by the ratepayers, namely, the treasurer and directors, and another officer, called le procureur des pauvres. When a pauper is brought by the constables, as a vagrant and drunkard, or without the means of subsistence, he is given into the custody of the hospital. The constable pays the institution for maintaining him; and, though it all comes out of the same purse, those gentlemen keep the accounts distinct from the accounts of the hospital.

5418. You mean that the hospital does not permit the Court here to trespass upon their funds?—Yes; or upon their authority. The place where they send paupers who misbehave themselves is distinct entirely from the poorhouse. It belongs to it, it is true; but it is a separate building.

5419. Mr. *De Havilland.* It is called the house of separation.

5420. Mr. *Jeremie.* It was built in 1832. In point of fact, it may be called a maison de discipline for those who misconduct themselves. The fact is that there is no house of correction here whatever. My reason for making this explanation is to show that there is no authority on the part of the Court to send there. It is only by sufferance. In the case of a pauper stranger who is taken to the hospital, the constable pays for his maintenance. If it is a pauper belonging to the parish, it falls within the general rule.

5421. Mr. *Le Retilley.* The Commissioners asked yesterday whether any of the magistrates upon the bench were in business. It did not occur to me yesterday to state that I am a shareholder in the Commercial Bank here.

5422. (To Mr. *Le Marchant.*) Are you in partnership in the Bank now?—No: my name is on the notes; but it will be taken off at the end of the year.

5423. How long have you ceased to be in the house?—About three months.

5424. Mr. *Mansell.* I should say that I ceased being in trade the moment I was elected magistrate.

5425. Do you mean that you have no profit derived from the business?—None at all.

5426. The gentleman who has the business now is your son, is not he?—Yes.

5427. He is not your agent or clerk?—No; not at all. I wish to say also that I am concerned in the South of England Steam Company: and I am also a shareholder in the railways.

5428. The *Bailiff.* My grandfather, who was a brewer, was constituted a prisoner, in the year 1764, for not taking the oath, after he was named Jurat. He raised several points. I collect from his letters that he raised the point of his being a brewer: but, I believe, he found the proceeding before the Privy Council expensive, and it was dropped. In his letter to his attorney he argues on the Ordonnance of the Commissioners of James the First, and insists on its literal interpretation.

5429. In the event of a Jurat retiring, are there not certain fees to be paid?

Mr. *Carré.* It must be done by the Privy Council; and there are certain expenses of proceeding before the Privy Council.

5430. If a Jurat wishes to be relieved from his duties, the only way is to obtain an order of Council, discharging him, which is in the nature of a law?—Yes.

5431. Probably that would be an expensive proceeding?—Yes. I think, in some cases, the States have caused the petition to be dismissed. There were two cases, lately, of Mr. Peter Dobrée and Mr. Le Pelley, whose application to the States for discharge, on account of ill-health, were considered and allowed; and the States paid the expenses of an application to the Council. I can hand in to the Commissioners the proceedings in those two cases.

5432. *The same were delivered in and are as follows.*

Monsieur, Beauregard, Guernsey, 3 Août, 1842.

De retour aujourd'hui en cette Ile j'ai l'honneur de vous informer que je me trouve contraint de resigner la charge de Juré Justicier de cette Cour Royale, à laquelle je fus sermenté le 14me Mai, 1831; ma santé ne me permettant pas d'en remplir plus longtems les devoirs. J'ai saisi l'occasion de mon séjour à Londres pour consulter un médecin des plus eminens de cette capitale; il attribue le dérangement de ma santé en entier à l'impurité de l'atmosphère auquel j'avais été exposé dans cette Cour, ainsi que vous le verrez par le contenu d'un certificate que je tiens sous sa main, dont je vous remets ci-jointe la copie. Messieurs S. Hoskins et De Beauvoir De Lisle avaient déjà exprimé la même opinion; et moimême j'en suis convaincu d'après ma propre expérience.

Sous ces circonstances, ma marche est clairement tracée; et je croirais manquer à mes concitoyens si j'hésitais un seul instant à la suivre. Je vous prie donc, Monsieur, de vouloir bien, aussitôt que vous le jugerez convenable, soumettre aux Etats la question qu'il leur plaise accorder ma démission, en conséquence de l'état de ma santé, qui ne me permet plus de remplir les devoirs de la charge, et s'addresser à Sa Majesté en Conseil afin d'obtenir l'approbation Royale.

Il me reste à vous prier de vouloir assurer tous les membres de la Cour et recevoir pour vonsmême la même assurance du regret que j'éprouve en me séparant de mes collégues avec lesquels j'ai toujours agi avec la meilleure intelligence, et des sentimens d'amitié que je conserverai toujours pour eux individuellement.

J'ai l'honneur d'etre, &c.,

A. D. D. L. Brock, Ecr., Président des Etats. P. B. Dobrée.

(Copy.)

Suffolk Place, Pall Mall, 24th June, 1842.

I have been consulted by Mr. Dobrée on account of his health, which is considerably impaired; and the cause, I have no doubt, is occasional confinement in a vitiated atmosphere. If the cause continues to be applied, I am confident that Mr. Dobrée's health will be irreparably injured, and perhaps his life endangered.

(Signed) Jas. Johnson, M.D.

5433. Aux Etats de l'Ile de Guernsey tenus le 23 Août, 1842, devant Mons. le Baillif, présens, &c.

Les dits Etats ont délibéré et décidé,

Qu' ils sont d'avis, en acquiescent à la demande de Pierre Bonamy Dobrée, Ecuyer, de supplier très humblement Sa Majesté la Reine de vouloir bien lui accorder sa démission de la charge de Juré de la Cour Royale, et autoriser les Etats à procéder à une nouvelle élection.

Le 1 Décembre, 1835, devant Daniel de Lisle Brock, Ecuyer, Baillif, présens Jean Guille, Jean Hubert, William Collings, H. O. Carré, Pierre Bonamy Dobrée, Thomas William Gosselin, and Thomas Le Retilley, Ecuyers, Jurés.

Monsieur le Baillif ayant présenté à la Cour un ordre de sa Majesté en Conseil, en date du 25 Novembre, 1835, transmettant copie d'une pétition de Pierre Le Pelley, Ecr, suppliant Sa Majesté de lui accorder sa démission de la charge de Juré, la Cour, après avoir entendu lecture du dit ordre a ordonné qu'il sera enregîtré, et est Monsieur Le Baillif prié de faire assembler les Etats le plutôt possible pour les consulter sur la demande de Monsr Le Pelley.

*Ordre du Conseil.*

At the Council Chamber, Whitehall, the 25th of Novr., 1835.

By the Right Honourable the Lords of the Committee of Council for the affairs of Jersey and Guernsey.

His Majesty having been pleased, by his Order in Council of the 20th inst., to refer unto this Committee a petition of Peter Le Pelley, Esquire, of the Island of Guernsey, for permission to resign the office of Jurat of the Royal Court of that Island, it is ordered by their Lordships that the said petition

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(copy whereof is hereunto annexed) be, and it is hereby, referred to the Royal Court of the Island of Guernsey, for such observation as they may think fit to make thereon.

C. GREVILLE.

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To the King's most Excellent Majesty in Council,

The humble petition of Peter Le Pelley, Esq., one of the Jurats of the Royal Court of the Island of Guernsey,

Sheweth,—That your Petitioner was sworn a Jurat of the Royal Court of Guernsey on the 2nd of October, in the year 1820, and that he has since that period discharged the duties of that office. That your Petitioner, in consequence of the effect of its duties upon his mind which cannot reconcile itself to their irksomeness, considers himself incompetent to discharge them effectively. That your Petitioner resides, for a considerable portion of the year, in the Island of Sark, where he possesses property and pays local rates, besides being frequently absent from Guernsey in his occasional visits there; and, therefore, not living always in Guernsey, he considers he cannot in justice be called upon to fill a local situation which demands permanence of residence and constant attendance. That, moreover, your petitioner's health is materially affected by the confinement and irksome duties attendant on the office of Jurat, and that to a degree as of itself alone to be sufficient to establish a claim to his discharge. Your Petitioner therefore humbly prays that your Majesty will be pleased to permit him to resign the office of Jurat of the Royal Court of the Island of Guernsey. And your Petitioner, as in duty bound, will ever pray.

Guernsey, Oct. 25, 1835. (Signed) P. LE PELLEY.

Aux Etats de l'Ile de Guernsey tenus le 22 Décembre, 1835, devant Monsieur le Bailiff, présens, &c. Les dits Etats ont délibéré et décidé.

1°. Qu'ils sont d'avis de donner leur consentement à ce que la démission de sa charge de Juré demandée par Pierre Le Pelley Ecuyer lui soit accordée."

5434. Mr. *Le Retilley.* About the year 1776, certain disputes arose between the Jurats and the Bailiff. Several Jurats resigned their offices, and were afterwards re-elected by the States. They petitioned the Privy Council, before taking the oath of office, that they might be allowed to resign at any time through age or infirmity, without any other formality. The Order in Council amounts to a refusal.

5435. The *Bailiff.* There is a matter connected with what was mentioned yesterday respecting the notes of what takes place at enquêtes not being usually taken down. In looking into the old books, you will occasionally find that the notes of the evidence taken at enquêtes are recorded. I have here a copy of what took place at an enquête in 1593.

5436. (To the *Bailiff.*) Which kind of enquête is that?—I suppose, it would be a petite enquête. It is an inquiry which took place at the instance of the Governor, touching certain expressions which had been used towards him: and, though it is rather general in its expressions, there is only one particular case gone into. The judgment of the Court is not very formal; but, instead of dismissing the complaint, they seem to say that he was Not Guilty, which is rather a step in advance. The next entry, in the same book, contains the proceedings of an enquête in the nature of a levée de corps; and there the evidence also is set out. That also is not generally the case. I give those as two instances of the evidence on an enquête being taken down and preserved.

*The following entries were read.*

5437. "Le viii jour du dit moys et an (Aoust 1597), par devant le dit Bailly ꝑns à ce Nicollas M^r^tin Senior, André Henry, Jean Saumarez, Pierre Beauvoir, Pierre Careye, William le M^r^chand, Jean Effart, Nicollas Martin Junior, & George Guille, Jurez.

Sur ce que Mons^r^ le Gouverneur à informé la Justice avoir entendu de M^r^ Henry Smyth que certains propos ont esté tenus ꝑ aulcune des habitans de ceste Isle tendans à trahison contre sa Ma^té^ et l'Estat de ce Gouvernement, à l'instance des Officiers de sa d^e^ Ma^té^ ont esté faicts convenir ceulx cy après examinez.

M^r^ Henry Smyth, Escuier, a, ce jourd huy, rapporté en Justice, Que, un jour, Mons^r^ estant venu au presbytaire la première fois après son arrivée, là, après quelq^s^ discours tenus avec le dit Sieur Gouverneur concernant les amys qu'estimait avoir en ceste Ville, M^r^ Pierre Careye aurait ramenter son nepveu, Nicollas, n'avoir esté mis au nombre, luy estant bon serviteur et amy. Ce que recitant le dit Smyth à M^r^ William Devyck et à Eléazar le M^r^chand, iceluy le M^r^chand deist, que, sy il en sçavait aultant que luy, il ne l'estimerait tel, veu les propos qu' avait tenus. "Que si la Royne estait morte, il esperait estre ung des premiers qui tirerait le dit S^r^ Gouverneur hors du chasteau ꝑ les oreilles." Ce que le dit M^r^chand luy ayant ainsi déclaré, le dit Smyth, une aultre fois, luy ayant redemandé sy il voulait maintenir les propos qu'il luy avait tenus par devant, luy deist le voulloir faire, et que les tenoit de James Beauvoir qui luy avoit dict les tenir de la bouche du dit Careye.

Le dit Eléazar le M^r^chand ayant esté appellé ꝑo^r^ sçavoir sy il verifieroit dont tenoit les propos ainsy dicts au dit Smyth, dict Que, sur conférence que le dit Smyth tenoit du nombre d' amys que le dit Sieur Gouvernour tenoit avoir en ceste Ville, desquels M^r^ Pierre Careye deist tenir son nepveu pour ung, Que il estimait que le dit Sieur Gouverneur en avait cinq cents en ceste Isle plus, ou à tout les moins aultant bien, affectionnez à son service que le dit Careye. Et que il estait bien changé, sy il se trouvait tell, veu les propos queaultres fois il avait tenus du dit S^r^ Gouverneur. Sçavoir "Que sy il avenait que Sa Majesté décédast, il serait l'ung des premiers qui vouldroict tirer le dit S^r^ Gouverneur ꝑ la Quevichaille hors du Chasteau." Ainsy à entendu et tenait de James Beauvoir qui les luy avait dicts sur la Chausée, il y a viron deulx ans, lesquels disait luy avoir esté dicts de Nicollas Careye.

James Beauvoir, appellé ꝑ devant nous ꝑo^r^ sçavoir sy il avait tenus tels propos qu' Eléazar le M^r^chand dict tenir de luy, et que luy aurait dict les tenir de la bouche de Nicollas Careye. Avant que prester serment voullait sçavoir et congnoistre du dit Eléazar sy il voullait maintenir

que luy aurait dict tenir tels propos de la bouche du dit Careye, ce que le dit Eléazar n'a voulu maintenir, encore qu'il l'eust dict au paravant.

Le dit James Beauvoir, enquis par son serment presté touchant ce que dessus en choses tendantes après ou viron, soit de Nicollas Careye ou aultres quelconques en toute ceste Isle, Dict que, aultres fois, il a ouy dire à Nicollas le Cornu, que De la Polle a ouy de Nicollas Careye quelques mauvais propos cõtre la personne de Mons$^{r}$ le Gouverneur.

Item qu'il a entendu de la bouche de Jean Faultrait que le dit Nicollas Careye, estant en sa maison transporté de vin, disait que la mort de Sa Ma$^{té}$ advenante (que Dieu ne vueille) que vollontiers Sire Thomas Leighton, Gouverneur, ne incqueroit pas ou serait long temps au Chasteau.

Jean Faultrait, enquis par son serment sur ce que devant, dict, qu'à jour passé, viron deulx ou trois ans (cõme il luy ꝑeult souvenir), Nicollas Careye le pria d'entrer en sa maison à trois ou quatre heures après midy, ou ayant bien beu, luy disait debvoir de l'argent aux enfans de sa fẽme, dont il luy faschoit n'avoir le moyen de payer, mais qu' il luy estait deub d'aultres debtes qui de ceste cy et d'aultres. Et que la cãe de son mall provenait de ce que le Gouverneur l'empeschoit de faire valloir son bien, toutes fois, avenant la mort de sa Ma$_{té}$ (que Dieu sauve), vollontiers qu'il serait ou gouvernerait toujours à son chasteau.

Le ix$^{e}$ jour du dit moys et an, par devant le dit Bailly (Louys Devyck), ꝑnṡ à ce Nicollas M$^{r}$tin Senior, Jean Saumarez, Pierre Beauvoir, Pierre Careye, Jean Effart, et Nicollas M$^{r}$tin Junior, Jurez.

Enqueste passée, ce jourdhuy, pour cognoistre des propos allégués par Eléazar le M$^{r}$chand et déclarés en Justice; Nicollas le Cornu par son serment presté rapporte que, un jour luy estant avec Nicollas Careye et M$^{r}$ Gregory De la Polle, il ouyt le dit Careye (lequel estait ung peu transporté de vin) tenir des propos de mescontentement du dit S$^{r}$ Gouverneur, il y a viron sept ans passés, lesquels ne peult rememorizer. M$^{r}$ Guillaume Beauvoir ꝑ son serment presté dict et rapporte Que, viron le cõmencement du moys de Juing, luy estant au Chasteau où Nicollas Careye estait Prisonnier po$^{r}$ lors, il ouyt dire à M$^{r}$ Pierre Careye au dit Chasteau tels propos "Quel malheur est-ce Icy." Que il avait ouy ung bruict, que le dit Nicollas Careye debvoit avoir dict "Que, sy Sa Majesté estait décédée, il serait ung des premiers qui tirerait le dit Sieur Gouverneur hors de son Gouvernement du Chasteau," chose qui estait pour beaucoup animer le dit Sieur sy il en estait embouché. Lequel M$^{r}$ Pierre Careye voulait que son dit nepveu allast s'en purger vers le dit Sieur tout à l'heure.

Thomas Effart, ꝑ son serment presté, dict et rapporte que lorsque Nicollas Careye estait en prison que Eléazar le M$^{r}$chand vint à luy, et luy deist "Advertissez votre frère qu'il se donne garde," car M$^{r}$ Smyth luy avait dict que tels propos couroyent. Lesquels le dit Eléazar luy deist que luy même tenait de James Beauvoir, les luy ayants dicts sur la Chausée, lequel Effart en advertit le dit Careye.

Jean Le M$^{r}$chand, ꝑ son sermente presté, dict et rapporte que il a ouy dire à Nicollas Careye, cõme mallcontent, qu'il vouldroict estre hors de ce pays et n'y avoir ꝑied de terre à cãe qu' il y avait beaucoup d'Ennemys.

Le xxvii jour du moys d'Aoust, 1597, par devant Louys Devyck, Bailly, ꝑṛs à ce Nicollas M$^{r}$tin Senior, Guillaume Beauvoir, André Henry, Jean Andros, Jean Saumarez, Pierre Beauvoir, Pierre Careye, Jean Effart, Nicollas M$^{r}$tin Junior, George Guille et Lyenard Blondell, Jurez.

Sur ce que M$^{r}$ le Gouverneur, le viii jour du moys ꝑnt, avait informé la Justice qu'il avait entendu de M$^{r}$ Henry Smyth que Eléazar le Marchand, à jours passés, luy aurait dict avoir ouy de James Beauvoir que Nicollas Careye avait dict au dit Beauvoir, viron deulx ans passey, que, la mort de sa Ma$^{té}$ advenante, que il serait ung des premiers qui tirerait le dit S$^{r}$ Gouverneur hors de son Chasteau ꝑ les oreilles. Information et deube examination par toutes voyes (ꝑo$^{r}$ cercher et cognoistre la vérité de ce) faictes à l'instance des officiers de Sa Ma$^{té}$, et icelles deubement et meurement considérées, il est regardé ꝑ l'oppinion des dits Jurés que le dit Careye n'est trouvé conveincu n'y atteinct de la d$^{e}$ délation faicte à l'encontre de luy.

Le xix$^{e}$ Jour du moys d'Aoust l'an Mille ciuq cent nonante sept, ꝑ devant Louys Devick, Bailly; ꝑnṡ à ce, Nicollas Martin Senior, Guillaume Beauvoir, André Henry, Jean Andros, Jean Saumarez, Pierre Beauvoir, Jean Effart, Nicollas Martin Junior, & George Guille, Jurez.

Enqueste à ce jourd'huy esté faicte, à l'instance des Officiers de sa Ma$^{té}$, pour sçavoir et congnoistre, ꝑ quel moyen, M$^{r}$ Walter S$^{t}$ Johns, Escuier, et Isaac Daubeney, son Pédagogue, sont morts, lesquels ont esté trouvez noyés dans la mer en Erme, le Jeudy, xviij$^{e}$ Jour du dit moys.

M$^{r}$ Pierre Careye, ung des Jurez de la Co$^{rt}$ Royalle, ꝑ son serment presté, dict et rapporte, Que le Jeudy, xviij$^{e}$ jour d'Aoust, 1597, Monsieur le Gouverneur l'ayant faict aller avec luy en l'isle d'Erme pour chasser le Dayn, accompagnez de M$^{r}$ Thomas Leighton, son fils, M$^{r}$ Walter S$^{t}$ Johns, Pierre Careye, fils du dit déposant, et Samuell Cartewright, avec leur M$^{re}$ d'Escolle, M$^{r}$ Isaac Daubeney, et plusieurs des Serviteurs domestiques du dit S$^{r}$ Gouverneur. Auquel lieu estans arrivez, Le dit S$^{r}$ avec le dit Careye et plusieurs de ses Serviteurs s'en allèrent à la chasse et laissérent le dit Daubeney avec les enfants, lequel demeura toute la matinée avec eulx, leur faisant dire leurs leçons, suyvant l'exercise qu' ils avoyent accoustumé, jusques à neuf heures du matin. Après quoy, M$^{r}$ Nicollas Blake, leur M$^{re}$ de Musique, les feist chanter jusques à dix heures. Et ce faict, le dit S$^{r}$ Gouverneur feist faire les prières au dit Daubeney. Et tost après alla disner accompagné des dits Enfans, du dit déposant, de M$^{r}$ Daubeney, du Portier de son Chasteau, de Guillaume le Prevost et de Nicollas le Gros, où, estans encore à table, sur la fin du disner, ses enfans luy feirent requeste qu'il luy ꝑleust leur donner congé de leur aller baigner. Ce que ꝑ deulx ou trois fois le dit S$^{r}$ Gouverneur leur refusa. Et mesme leur pédagogue, M$^{r}$ Daubeney, leur deist qu' il ne faisait point bon y aller, d'aultant que le Solleill ne donnait point de chaleur. Toutefois, importunans de rechef le dit S$^{r}$ leur pere, il leur donna congé ꝑ condition que quelques gens de jugement allasent avec eulx. Sur quoy, tost après, les dits quatre enfans, accompagnez de leur dit M$^{re}$, M$^{r}$ Daubeney, de Jean Andros, et de Jean

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Farell, le barbier du dit S$^{r}$ (auxquels il avait donné charge de ne les laisser aller trop avant en mer) ꝑtirent vers la mer. Et q̃ viron une heure après, le dit déposant, estant en compagnie de M$^{r}$ Blake et de Roger Baker, veit venir le dit Jean Andros avec M$^{r}$ Thomas Leighton, lesquels venus à eulx leur deisrent q̃ M$^{r}$ Daubeney estait noyé. Sur ce, à mesme instant, le dit déposant s'en alla vers le dit S$^{r}$ Gouverneur, lequel estait endormy soubs sa tente, (voire d'ung pesant dormir) d'aultant que s'estoit levé à une heure après minuit, et l'ayant tiré deulx ou trois fois ꝑ son manteau avant q̃ s'esveillant, le pria luy pardonner de ce qu'esveilloit Sa Seignurie, car c'estait pour l'advertir que M$^{r}$ Daubeney estoit noyé (noyé, deist il, hélas); et, cõmenceant à se lever, son dit fils et Jean Andros luy deisrent que M$^{r}$ Walter S$^{t}$ Johns estoit aussy noyé avec luy; où, à l'heuremesme, le dit S$^{r}$ Gouverneur redoubla ses regrets et doulleurs avec ung tel espouvantement & ennuy qu'il demeura sur la place to$^{t}$ etonné & esperdu. Et q̃ sur ce le dit déposant leur demanda où estoyent les corps. Et ils luy respondirent qu'estoyent en la mer, laquelle les emportait. Parquoy le dit déposant courut to$^{t}$ à l'heure, en la plus grande dilligence qu'il peult, vers le lieu, accompagné de quatre des serviteurs du dit S$^{r}$, où estans arrivez, le dit déposant appella à luy Henry de Calleys et son esquippage qui estoyent là près, dans son batteau, lesquels ayderent à sauver les corps et le meisrent dans leur batteau, dans lequel le dit déposant s'embarqua avec aultres des serviteurs du dit S$^{r}$. Et apportèrent les dits Corps morts au Chasteau Cornet, le dit S$^{r}$ Gouverneur les accõpaignant dans sa challoppe. M$^{r}$ William Taylor, gentilhõme, Portier du dit Chasteau Cornet, ꝑ son serment presté dict & rapporte que, hier matin, xviij$^{e}$ jour d'Aoust, 1597, viron deulx où trois heures devant le jour, s'estant levé ꝑo$^{r}$ advertir le S$^{r}$ Gouverneur de l'heure qu'il pouvoit estre, suivant la charge que le dit S$^{r}$ luy avoit donnée de l'appeller de grand matin pour aller en Erme à la Chasse; auquel S$^{r}$ ayant parlé, luy demanda sy les enfans yroyent avec luy & sy les esveilleroit, lequel respondit que non. Et que sy on ne les avait desjà appellez, il donnast charge que personne ne les appellast; neantmoins, le dit déposant passant par devant la chambre des dits Enfans, cõme il alloit envoyer le batteau en Ville ꝑo$^{r}$ querir M$^{r}$ Careye & des Mariniers pour aller avec le dit S$^{r}$ Gouverneur, il trouva M$^{r}$ Walter S$^{t}$ Johns levé à l'huys de sa chambre en sa chemise, lequel luy demanda sy il estoit pas heure d'aller en Erme, lequel déposant luy feist responce que non, & qu'ils n'yroyent point, ꝑ ce que n'estoit le plaisir du Gouverneur quils y allassent; lequel replica au dit déposant que le dit S$^{r}$ luy avoit dict, le soir, que luy et son frère Thomas yroyent àvecq luy. Sur quoy ils s'accoustrèrent & vestirent leurs vestemens, de quoy le dit déposant ayant adverty le dit S$^{r}$ Gouverneur et que desyroyent aller avec sa Seignurie, leur M$^{re}$ d'Escolle, étant là près, deist au dit S$^{r}$ que sy c'estoit son plaisir qu'ils y allassent, il yroit aussy avec eulx & porteroit leur lyvres pour les y faire estudier. Et que, sur ce, le dit S$^{r}$, considerant que son Cuisinier estoit malade au lict et quil falloit que le garson de la Cuisine allast avec luy, parquoy il n'y auroit qui leur accoustrast à disner, leur permeist d'aller avec luy. Sy qu'estans arrivez en Erme de grand matin, leur dit M$^{re}$ les feist vacquer à leurs estudes jusques à viron neuf heures. Et puis après, leur M$^{re}$ de Musique, M$^{r}$ Blake, les feist chanter la musicq̃ jusques à dix heures, après ce que le dit Gouverneur feist faire les prières à M$^{r}$ Daubeney, quoy faict, se meist à disner accompagné cõme rapporte M$^{r}$ Careye, où, sur la fin du disner, M$^{r}$ Thomas Leighton demanda congé à son père d'aller luy et son frère, M$^{r}$ Walter & les aultres leur baigner en la mer. Ce que le dit S$^{r}$ Gouverneur ne leur voulut octroyer à l'heure à leur première demande, mais, insistans encores ꝑ deulx où trois fois de la prier, leur accorda qu'il sy allasent, à la charge qu'il yroit quelques gens discrets avec eulx pour les gouverner, et afin qu'ils n'allasent trop avant en l'eau. Et furent ordoñez M$^{r}$ Daubeney, leur M$^{re}$, Jean Andros, et Jean Farell, lesquels ꝑties le dit déposant dict ne les avoir reveus jusques à ce que les veis dans le batteau, après qu'ils eurent esté levé hors de la mer.

M$^{r}$ Nichollas Blake rapporte cõme le dit Taylor, et aussy qu'il rencontra M$^{r}$ Thomas Leighton et deulx ou trois aultres qui s'en venoyent pleurants, et disans que son frère, M$^{r}$ Walter St Johns, estoit noyé & son M$^{re}$ d'Escolle, M$^{r}$ Daubeney.

Jean Jourdan
Roger Baker
David Morrice
Owen Roberts
Hughe Lambert
} rapportent tous cõme le dit Taylor.

Jean Andros rapporte cõme le dit Taylor, et qu'après disner Mr. Walter St. Johns le vint appeller pour aller avec luy se baigner, et avec les aultres; lequel se meist en chemin avec Mr. Daubeney et Jean Farell et les dits Enfans. Et, cõme ils alloyent en chemin, que le dit Mr. Walter, faisant plus de haste que les aultres, se desboutonna son pourpoint et le destacha, lequel bailla à Jean Farell à garder et ainsi s'en alla devant à l'Est d'Erme; et entra le premier en l'eau le dit Mr. Walter St. Johns; où incontinent aussi arrivèrent Mr. Thomas Leighton, Pierre Careye, et Samuell Cartewright, lesquels aussy entrèrent en l'eau; sçavoir, Le dit Mr. Thomas Leighton non plus profond qu'a my jambe et le dit St. Johns non plus profond que le genouill; ainsy le dit Mr. St. Johns deist "Je m'en vay nager vers mon frère;" et cõme il se baissa pour nager, la mer l'emporta sy soubdainement, que le dit Andros, qui estoit encores empesché à se deschausser, n'y peult donner remède; toutes fois courut, sy tost quil peult, à une pointe de rocher plus prochaine du dit St. Johns, où en chemin tomba et se bleça et feist grand mal en son pied, tellement que ne pouvant sy bien aller, Mr. Daubeny se despouilla et se jecta en l'eau et nageant fort bien vint au dit Mr. Walter St. Johns et luy deist quil montast sur son dos, ce que le dit St. Johns feist. Et incontinent, le dit Daubeney roulla en l'eau tellement que ne le pouvait veoir et ne se releva plus, Et le dit St. Johns cria au dit Andros quil vint luy ayder, sur quoy le dit déposant se jecta en la mer et incontinent fut intortillé de plises, tellement qu'il roulla à fonds et à peu près fut noyé, et à grand difficulté se peult sauver. Ce qui fut au moyen d'un rocher qu'il trouva en l'eau; ainsy furent les dits Daubeney et St. Johns noyez.

Jean Farell rapporte cõme le dit Taylor et qu'après que à la mer que les dits

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enfans se meisrent en l'eau ainsy qu'a desclaré le dit Jean Andros, et dict que veit Mr. Leighton, qui n'estoit en l'eau que jusqu'á my jambe, et le dit St. Johns non plus avant qu'au genouill; et cõme le dit St. Johns disoit qu'il nageroit vers son frère se meist bas, et la marée l'emporta hors tellement que le dit déposant se meist à aller après pour le querir, et où il n'avoit de l'eau qu'au genouill ne feist que deulx pas qu'il se trouva en grand profonds, et nagea après le dit St. Johns, mais ne le peult atteindre et eult beaucoup de peine à se sauver. Ce qu'il feist à grande difficulté au moyen d'un rocher qu'il gaigna où il se tint. Au reste rapporte cõme le dit Jean Andros.

Jean Bohyer dict qu', estant couru vèrs le lieu ou avoyent esté noyez, il se meist en l'eau jusques à viron cinq pieds de profonds, où il se lança la teste et espaulles dans l'eau et trouva Mr. Walter debout, lequel estoit entortillé dans la plisse, lequel il empoigna et à grand difficulté le tira à terre, où estoyent Mr. Careye.

Jean Jourdan & David Morrice qui veirent cõme il l'amena à terre; où le dit David luy vestit sa chemise & le feist Mr. Careye mectre dans ung batteau qui estoit là près, avec le corps de Mr. Daubeney; et ainsy furent apportez au Chasteau.

Jean Jourdan et David Morrice rapportent cõme l'avant dit Taylor, et qu'estoyent pñs, quand Jean Bohyer tira et leva le corps de Mr. Walter St. Johns à terre, lequel Mr. Careye feist mectre avec celuy de Mr. Daubeney dans ung batteau qui estoit là près; et ainsy furent apportez au Chasteau. Roger Baker, Owen Roberts, et Hewgh Lambert, rapportent cõme le dit Taylor.

Guillaume le Prevost, Nicollas le Gros, Jean Le Marivel, Jean Vauldin, Amos Le Poytevin et Aymes Mutell rapportent qu'ils estoyent tous six dans la challoppe du dit Sr. Gouverneur à Gethou, et que quand ils furent venus ils furent tous estonney des nouvelles qu'on leur en deist. Henry de Calleys, André Marche, Collas Mauger, Jean Herm, Hillaire Godefroy, Robin de Bertrand, Thomas Le Guignon, Michell Nicolle, Samuell des Paulx, et Isaac Roberts rapportent que, allants avec leur saffre pour saffrer amont, Mr. Pierre Careye les appella pour cercher les corps noyez, et quils s'en allèrent au lieu, où ils avoyent esté noyez, qui s'appelle les Mouillierres, où ils trouvèrent le corps de Mr. Daubeney sur une pierre endonthe sur le ventre, ses pieds pendans en l'eau d'ung bord de la pierre, et sa teste de l'autre, lequel ils tirèrent en leur batteau et luy revestirent sa chemise, et leur fut aussy baillé le corps de Mr. Walter St. Johns, lesquels ils portèrent auprès de la Challope du dit Sr. Gouverneur à la Roziere et de là les apportèrent au Chasteau.

5438. The *Procureur.* There is an enquête in the books of the Greffe concerning wool which is said to have been exported from Alderney, in which the evidence is preserved.

5439. How long ago is that?—Somewhere about the year 1730.

5440. To Mr. *Jeremie.* With regard to the question how far insanity renders a person irresponsible to criminal law. It would occur in two ways, would not it? A person might be insane at the time he was called on to be tried; and, in another case, a person might be insane when he committed the offence.—I do not know that there would be any distinction. If he were insane, either at the time he committed the offence or at the time he was brought up for judgment, I should suppose there would be no distinction.

5441. When you say brought up for judgment, do you mean brought up for trial?—Yes. I would beg to say that our mode of proceeding is so different from the proceedings in England that many expressions used by us might be used in a different sense from that in which they would be understood by the Commissioners. As a matter of course, if you bring up a man to answer to a charge who is insane, he cannot submit to his trial. He not being in possession of his faculties, you cannot try him.

5442. The Contrôle states, in his answer, that the Court would stay proceedings, if there were ground to suppose the accused had committed the act when he was of insane mind, in order to have that particular fact ascertained by evidence. Is that the mode of proceeding in your opinion?—I have never known an instance of that kind. If a man is brought up for trial and pleads insanity, the question of insanity is immediately entered into; and, whether he was of insane mind at the moment he pleaded or when the offence was committed, the result of the decision would be the same.

5443. You first try the question of insanity?—Decidedly; that is what we call here a prejudicial question.

5444. The *Contrôle.* Suppose, on the view of the man or otherwise, any thing appeared in the evidence before the Court to give them reason to suppose the man was insane, the criminal proceedings would be suspended for the purpose of testing that particular point.

5445. Mr. *Jeremie.* When I stated that I did not know of a case, I understood the Commissioners to ask for a case where, upon the preliminary proceedings, an individual had been accused of murder and the Court doubted whether he was of sane mind or not. I do know of a case where, a man being brought up to stand his trial, his advocate put in the plea of insanity, and the Court, finding he was so, as a matter of course acquitted him, but ordered him to be confined.

5446. (To Mr. *Jeremie*). Supposing the Court, upon the question coming on in the way you suggest, before going into the charge, find the man is insane; what then takes place?—I consider that they ought at once to acquit him, if they declare him insane.

5447. Suppose a man was tried and proved to have been of insane mind at the time of committing the offence, that would not be a stay of proceeding but an actual acquittal, would it not?—Yes. What I say is that, whether a man is found insane at the commencement of the action or when he takes his trial, the result would be the same.

5448. What is the entry made by the Court on that occasion?—The Court finding insanity would make an acte: and I conceive that the Court, as they do when anything extraordinary takes place both in civil and criminal questions, would *motive* their decision.

5449. The Court making an acte of this sort, what becomes of the person who is found by the Court to be insane?—I conceive, the only thing the Court has to do is to send him to a

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lunatic asylum. There has been a trial here, in the case of Chapman alias Melmoth, of which I will read the sentence. "La Cour, après avoir entendu les dépositions des témoins des officiers du Roi et celles des témoins justificatifs du dit Joseph James Chapman, aliàs Melmoth, prises à futur et redigées par écrit, est d'opinion que le dit prisonnier est coupable du meurtre de William Brown, mais qu'il était dans un état de démence lorsq'il a commis le dit crime. La Cour est de plus d'opinion, d'après le témoignage, que le dit prisonnier est depuis longtemps sujet à de fréquentes aliénations d'ésprit qui le rendent, comme l'expèrience ne l'a que trop malheureusement démontré, des plus dangereux à la societé. Partant la Cour juge qu'elle ne peut, vu le dit état de démence, porter d'autre jugement que celui qui ordonne que le dit Joseph James Chapman, aliàs Melmoth, ne pourra plus être mis en liberté dans cette Ile, qu' il y sera gardé en prison tout et aussi longtemps qu' il y restera et jusqu' à ce qu' il en soit autrement ordonné par la Cour."

5450. That was a case in which a man was tried and found to be insane. The question the Commissioners were asking was whether there is any mode of proceeding, before trying the crime, to ascertain the man's insanity?—That, I should say, would take place upon the trial. A man is accused of crime; the lawyer puts in a plea that he is insane; the Court would order evidence upon that. They might try that as a prejudicial question: and, if they found that the man was insane, I conceive the only course would be to acquit him.

5451. Two objections may arise; one is an objection to trying him at all, the other to convicting him when he is tried?—Certainly. If a man is found insane, he is irresponsible to punishment, as the act is not his own; and I have always considered that it is a singular form to say that the man is guilty of murder, but that he was mad when he committed the crime. I do not know how a man can commit murder, if he is in that state of mind in which they find him to be. He cannot be guilty of murder and be insane too.

5452. The Commissioners understand there are two modes of proceeding; one in which it would be tried as a prejudicial question, the other in which it would be tried as a defence to to the accusation. What would be done if the Court found insanity in either case?—I should think the Court would acquit him.

5453. What would become of him?—I should say they would give him into the hands of his relatives or his guardian to take care of him.

5454. The *Procureur*. There are two modes of proceeding. Supposing a case in which insanity should appear before the trial, the mode in which we proceed is this. On the 11th of January, 1770, a girl, named Rachel de Cartaret, was brought up for having set fire to her master's house; and, it appearing that the girl was insane, "il est ordonné que le Prevôt la gardera en chambre ou autre lieu aux frais de ses parens." The second acte in that case was on the 3rd of February, 1770. On that day it was ordered that she should be visited by Messieurs de Sausmarez and Le Serre, surgeons, to ascertain the state of her mind, who should make their report to the Court in a fortnight: "ordonné que Rachel de Cartaret sera visitée par Messrs. de Sausmarez et La Serre, chirurgiens, qui feront leur rapport dans quinzième."

5455. (To the *Procureur*). The object of that probably was to see whether she was fit to be tried?—Yes. On the 3rd of March, 1770, "Vu rapport des chirurgiens et voisins on cessera toute poursuite."

5456. Would that be tantamount to an acquittal?—No; the proceedings would be stayed.

5457. If the Court had considered that she was insane at the time of the act, and not at the time of the trial, she would have been ordered to choose her counsel, would not she?—Yes.

5458. Upon it coming out that she was insane at the time of the act the order probably would have been different?—The law in Terrien, Lib. xii. chap. xxv. folio 496, Des forcenez, would then come into play; and there would be done that which was done in Chapman's case.

*The passage was read as follows.*

5459. *La Coustume.* "S'aucun est hors de sens, et il occit ou mehaigne un homme par sa forcenerie, il doit estre mis en prison, et estre soustenu du sien: ou l'en luy doit pourveoir des communes omosnes s'il n' a de quoy estre soustenu. S'aucun est en telle manière forcené, que l'en doyve douter de sa forcenerie, qu'il ne trouble le pays ou par feu, ou par aucune chose qui soit contraire au commun salut, il doit estre lié et gardé par ceux qui ont ses choses, qu'il ne mefface à nully. Et s'il n' a rien, tout le voisiné doit mettre conseil et aide du sien à refrener sa forcenerie."

5460. The *Bailiff*. The "communes omosnes" used then to stand in the place of the parish.

5461. (To the *Contrôle.*) You say in your answer that "Insanity may be made the ground of defence by the counsel of the accused, who must establish it, and that on his establishing it the party would be detained in prison during Her Majesty's pleasure." Is that the law?

5462. The *Contrôle.* Not exactly so. From the case of Chapman which has just been cited, it appears he would be detained in prison. I rather presume that in the case of a person having no friends or relations that would be done here.

5463. Do you think you have any power to imprison him till Her Majesty's pleasure is known?—Yes.

5464. The Queen might very well say: "I think such or such asylum would be a proper place for the man." According to Terrien that would be improper.

5465. The *Bailiff*. I think, in the case of Melmoth, he was ordered to be detained in prison until it should be otherwise ordered by the Court. A petition was presented afterwards, praying for permission for him to leave the Island for ever: and, upon that, the Court ordered that he should be given up to his relations.

5466. In strict law would not that be wrong?

Mr. *Le Febvre* (Greffier). There was an order from the Secretary of State in Melmoth's case; and a messenger was sent over to convey him to England. The Mise en Accusation in Melmoth's case is in the ordinary form on a charge of murder; and the sentence has been already read to the Commissioners. I will now read the subsequent proceedings.

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Le treizième Août, mil huit-cent trente-un, devant Daniel de Lisle Brock, Ecuyer, Baillif, présens &c. &c. &c.

En faisant droit sur la requête du Révérend John Chapman, père, et du Révérend James Chapman, oncle de Joseph James Chapman, prisonnier détenu dans la prison publique en conséquencee de la sentence de la Cour Royale du 28e Janvier, 1826, priant la Cour pour les raisons contenues dans leur dite requête de vouloir bien mettre le dit Joseph James Chapman en liberté à condition qu'il s'éloignerait pour toujours de cette Ile, et représentant à la Cour qu', étant impossible pour le dit père et le dit oncle de se présenter dans l'Isle pour prendre charge du dit Joseph James Chapman à cause de leurs infirmités, ils avaient autorisé Monsieur Pierre Martin, Député Prevôt du Roi, de le conduire à Southampton et là de le remettre à Monsieur Charles Cook dans lequel ils avaient toute confiance, qui le conduirait à ses dits parens: La Cour, après avoir examiné par serment François Pery Hutchesson, et Jean T. O'Brien, Ecuiers, médecins-chirurgiens, qui ont déclaré avoir visité et connu le dit Joseph James Chapman depuis quelque temps, l'avoir examiné ce jour, et qu'ils ne voyent aucun danger à ce qu'il soit mis en liberté; considérant que par l'acte de cette Cour du douze Mars dernier il avait déjà été permis à ses parens de le faire passer en Angleterre, vu que le Gouvernement de Sa Majesté avait signifié n'y mettre aucun empêchement; considérant de plus qu'il n'est pas en leur pouvoir de le faire entrer dans un asyle destiné à la garde des personnes dans un état d'aliénation mentale, puisqu'il faudrait un certificat directement contraire à la déclaration susdite des médecins-chirurgiens, la Cour, ouiës les conclusions des Officiers du Roi, a permis que le dit Joseph James Chapman serait remis en liberté, et sous les soins du dit Monsieur Pierre Martin qui l'accompagnera à Southampton, où il le remettra aux soins de Monsieur Charles Cook, le tout à condition et sur la défense au dit Joseph James Chapman de ne plus revenir en cette Ile, portée dans la sentence de cette Cour du 28e Janvier, 1826."

5467. Mr. *Carré.* When a person has killed another, the written law is that he should be put in prison. Sometimes it is ordered that he shall be put in prison so long as he is in the Island. So that the Court confine their application of the law to the limits of the Bailiwick.

5468. The *Contrôle.* There is another case in which the question of insanity was mooted before trial. It is the case of Champion charged with having attempted to assassinate Mademoiselle de Jersey. By the Act of 10th of March, 1826, the Court direct him to be shut up in the public prison "Jusqu' à autre ordre." That was before the Cour du Quartier. Then, on the 3rd of April, in order to give his friends an opportunity of obtaining the judgment of the Cour en Corps on the facts and the state of his mind, the 10th of April is fixed to hear all parties; when the judgment of the Court is that there shall be no prosecution, but that the Crown officers shall take the necessary steps to appoint him a guardian, and his friends to be responsible to the Court for his safe custody in the Island, with permission to apply to have him sent out of the Island to a proper place.

*The following is the entry of the case.*

Le dixième Mars, mil huit-cent vingt-six, devant Daniel De Lisle Brock, Ecuier, Baillif; présens Jean De Lisle, Jean Guille, Jean Hubert, Jean Le Marchant et William Collings, Ecuiers, Jurés.

Richard Hicks Champion, fils Joseph, Ecuier, ayant été ce jour produit devant la Cour par le ministère de Nicolas Le Lievre, Ecuier, un des connétables de la ville et paroisse de St. Pierre Port, accusé d'avoir, hier au soir, neuf Mars, les cinq heures, assailli, assommé et maltraité Demoiselle Marthe De Jersey dans l'escalier du Mont Gobel, le dit Champion l'ayant suivie en courant après, l'avoir passée dans la rue en dessous du dit escalier, et l'avoir vue monter le dit escalier, de l'avoir atteinte et de suite frappée d'un bâton sur la tête, en lui disant, "I'll teach you to treat me in that way," ou mots à cet effet, de lui avoir donné plusieurs autres coups par la tête, le dos et l'épaule, qui lui causèrent plusieures meurtrissures, lui percèrent le chapeau et cassèrent le peigne sur la tête, la firent tomber par terre et la mirent en danger et crainte de sa vie, la dite Demoiselle De Jersey n'étant parvenue à s'échapper qu' à peine, et en conséquence de ce que lui même tomba dans l'escalier, et donna par là occasion à la dite Demoiselle de s'enfuir: La Cour, après avoir entendu des témoins dignes de foi, tant sur la susdite plainte que sur d'autres plaintes et faits qui constatent l'état de démence du dit Champion, ayant jugé qu'il est absolument nécessaire pour la sureté publique de s'assurer de sa personne, a ordonné, ouie la conclusion des officiers du Roi, qu'il sera gardé enfermé dans la prison publique jusqu' à autre ordre.

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Le troisième Avril, mil huit-cent vingt-six, devant Monsr le Baillif, présens Eléazar Le Marchant, Jean La Serre, Josias Le Marchant, Jean De Lisle, Jean Guille, James Carey, Jean Le Messurier, Jean Hubert, Jean Le Marchant, Pierre Le Cocq, et William Collings, Ecuyers, Jurés.

La Cour, ayant ce jour pris en considération l'acte du 10e Mars dernier, par lequel, sur la plainte contre Richard Hicks Champion, fils Joseph, Ecuier, spécifiée dans le dit acte, et après avoir entendu plusieurs témoins dignes de foi tant sur les faits contenus dans la dite plainte que sur d'autres faits qui constatent l'état de démence du dit Champion, il fut jugé qu'il était absolument nécessaire pour la sureté publique de s'assurer de sa personne, et ordonner qu'il serait gardé enfermé dans la prison publique jusqu' à autre ordre: La Cour, afin de donner occasion au dit Champion et à ses parens d'obtenir le jugement de la Cour en corps sur les dits faits et sur l'état d'esprit où il se trouve, a fixé, ouie la conclusion du Procureur du Roi, à Lundi prochain 10e du courant pour entendre tant le dit Champion, ses parens et leurs témoins, que les témoins des officiers du Roi et en ordonner.

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Le dixième Avril, mil huit-cent vingt-six, devant Monsieur Le Baillif, présens Josias Le Marchant et Jean De Lisle, Ecuiers, Jurés.

La Cour, extraordinairement assemblée en Corps en conséquence de son acte du 3e du courant pour faire droit sur l'acte provisoire du 10e Mars dernier, et décider tant sur les procédures à faire sur l'accusation portée dans le dit acte contre Richard Hicks Champion, fils Joseph, Ecuier, pour sa conduite envers Demoiselle Marthe de Jersey que sur son état d'esprit: La Cour, après avoir entendu le dit Champion, ses parens, et un grand nombre de témoins produits par les officiers du Roi, le dit Champion et ses parens n'en ayant produit, à jugé, ouie la conclusion des officiers du Roi, que, vue l'aliénation d'esprit du dit Champion constatée par les dits témoins, il ne sera fait aucune poursuite contre lui pour son attaque de la dite Demoiselle De Jersey; mais que les officiers du Roi prendront sans délai

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les mesures nécessaires pour lui faire nommer un curateur aux biens par ses parens. Et seront le dit curateur aux biens et les dits parens du dit Monsieur Champion tenus, à peine d'en répondre, de le garder, à l'avenir et jusqu' à autre ordre, enfermé en lieu de sureté dans cette Ile, sauf à eux de s' addresser à la Cour pour permission de l'envoyer hors de cette dite Ile, pour le garder ailleurs en lieu convenable. Et entre temps le dit Monsieur Champion continuera en prison.

5469. Mr. *Jeremie.* A case was decided in January, 1813, which I will read to the Commissioners.

*The witness read the same as follows.*

Les officiers du Roi à silence envers Guillaume Caré, dit Bonaventure, de la Tréve du Saint, paroisse de Gourrain, dans le département du Morbihau, en France, prisonnier du Château Cornêt, en la cause qu'ils ont contre lui à se voir adjuger aux peines et punitions imposées par les loix pour avoir, le dit Caré, le 17e Novembre, 1812, étant dépourvu de la crainte de Dieu, à la maison du Sieur Jean Le Retilley, au Mont Durant, en la paroisse de Saint Pierre Port, environ les quatre à cinq heures de l'après-midi, félonieusement tué, occis et meurtri Monsr. Joseph Troussier d'un coup d'arme à feu chargé à balle, et qui lui fit diverses blessures, une desquelles blessures faite par une balle déchargée de la dite arme à feu qui, étant entrée par la côte gauche et pénétrée entre la troisième et quatrième côte et passée au travers des deux lobes des poumons et sortie par la côte droite, causa la mort du dit Monsieur Troussier, lequel décéda environ deux heures et demie après avoir reçu la dite blessure, et leur payer leurs dépens, aux fins d'acte du 21e Novembre, 1812: Après qu'il a paru à la Cour que le dit Caré, dit Bonaventure, étoit en démence lorsqu'il tua le dit Monsr. Troussier; et ce après avoir entendu lecture de la déposition des témoins de dits officiers du Roi, et des témoins justificatifs du dit accusé:—

5470. Mr. *Jeremie.* In that case, the question was what was the state of the man's mind at the time of the commission of the deed; and they found him insane, after having heard witnesses for the prosecution and for the defence. The Commissioners will see from the following authorities that, though there is a difference as to the time at which the plea of insanity may be brought forward, the result is the same. Here is a case very much like Melmoth's case. It is a decision of the Cour de Cassation upon the 64th article of the Code Pénal, on an appeal from the Cour d'Assizes of Eure et Loire, January 4, 1817. The 64th article is in the following terms. "Il n'y a ni crime ni délit lorsque le prévenu était en état de démence au temps de l'action ou lorsqu'il a été contraint par une force à laquelle il n'a pu resister." The point was decided in the same way as Melmoth's case; and it came before the Supreme Court on a question of law. "Lorsque le jury déclare que l'accusé est coupable d'avoir *commis volontairement* le crime dont il est accusé, et qu'il atteste ensuite que, à l'époque où ce crime a été commis, *l'accusé était en démence*, ces deux déclarations ne doivent point être annullées comme étant contradictoires, parce qu'il est évident que, loin d'avoir voulu exprimer qu'ils reconnoissent en lui une culpabilité *légale*, les jurés n'ont entendu rien autre chose, sinon qu'il était *materiellement et physiquement auteur du fait*, mais qu'il n'y avoit apporté *q'une volonte d'homme en démence*, volonté *quasi animale*, qui, d'après le présent article, comme d'après les plus simples lumières de la raison, est nécessairement exclusive de toute culpabilité légale. D'où il suit que c'était le cas d'acquittement, et non celui du renvoi des jurés dans leur chambre pour y délibérer une nouvelle déclaration, comme l'avait requis le Procureur du Roi." In that case, they pleaded the fact and the law both together; in the case I have been reading they pleaded the facts separately; in this decision they were pleaded both together. What I wished more particularly to draw the attention of the Commissioners to, upon this subject, is with respect to the time at which that state of insanity may have befallen the man: whether it is at the moment of committing the crime, whether it is at the moment of judgment. And very able civilians have gone so far that, even though he be sane at the time of the trial and at the time of the commission of the offence, yet if he is not sane at the moment of the execution they will not execute him, on the principle that the punishment is for the sake of example, and that hanging a man who has no will of his own sets aside all the advantage of example.

5471. (To the *Procureur*). Do you consider that your law extends further than that laid down in Terrien, which appears to be confined to where a madman may harm or murder another in his fury?—We have no other law than that in Terrien; but, in practice, we consider it extends further.

5472. You consider maiming and murder put as exemplifications of the principle?—Yes.

5473. Not as confining the principle to those two cases?—No; we consider ourselves very much as the Scotch consider themselves, that, though there be no statute, the Royal Court have an authority to punish every crime, though we may not have a positive law or statute on the point.

5474. Mr. *Jeremie.* There are different degrees of insanity; but there is one where a man is furious and therefore causes greater danger to others than he does even to himself. In that case, the Crown Officers here, I should imagine, could entertain it and order that the person be taken proper care of, though there was no crime brought against him.

5475. That is provided for in Terrien?—Yes.

5476. How far is any person who is under the coercion or restraint of another considered responsible? Take the case of husband and wife: the wife is supposed to act under the coercion of the husband in committing certain crimes. Does that extend to all crimes; theft for instance?—I should say myself that it does not extend to cases of murder and some other cases: but, as to theft and acts which we call "injures," the fact of acting under the coercion of her husband makes the act not her own; and therefore the Court would not hold her responsible. But I do not think, in case of murder or extreme acts like those, she could plead such coercion.

5477. You would confine it probably to offences against property?—Yes, and minor offences against the person.

5478. A wife slapping a person's face in the presence of her husband would be supposed to be acting by the orders of the husband probably?—That would be going very far. If the proceeding were by a cause en adjonction he would be the victim.

5479. A cause en adjonction must be brought against the husband, must not it?—You would bring the action against the husband; but you would put in the body of the action that it is the wife's doing. It would be the husband that would have to pay the penalty; and it would be against him the action would be brought.

5480. The *Contrôle.* They would both be sued; and both would be brought into Court.

5481. Mr. *Jeremie.* The husband must pay the penalty at last. Suppose the heirs of the husband and the wife have a distinct interest; the heirs of the wife would not lose a farthing in consequence of her act.

5482. (To the *Procureur.*) Do you agree with Mr. Jeremie as to the extent to which the responsibility of the wife is limited, by its being supposed that in her acts she is under the coercion of her husband? Is the rule general or confined to particular crimes?—I should say, it could not be a defence in any cases which would be tried au Grand Criminel. In a charge of coining, for instance, a woman was convicted of coining and her husband was acquitted.

5483. The *Contrôle.* In some cases au Grand Criminel she might be acquitted. In burglary for instance.

5484. The *Procureur.* We have no written law at all upon that point.

5485. Mr. *Carré.* For murder I do not think it could be pleaded.

5486. (To the *Procureur.*) Are the Commissioners right in saying that there is no absolute rule with regard to how far a wife is rendered irresponsible by being under the coercion of her husband; but that she is allowed to show absolute coercion in all cases?—I should suppose so. The only case in which that question has come forward was a case I pleaded when I was an advocate, many years ago, which is the case I have cited.

5487. The *Contrôle.* The fact is that we should follow as nearly as possible the English law upon that point, with this exception, that coercion would not be so easily presumed as in England. We should follow the principles of the English law with regard to the particular crimes.

5488. (To Mr. *Jeremie*). As we now understand the rule, it is that, in cases of crime, the wife is allowed to shew by positive evidence that she acted under control of the husband in the matter with which she is charged, with the exception of murder?—Yes; and even then she would be allowed to shew that she acted under the compulsion of the husband; but that would only go to affect the question what was the degree of participation she took in it. The fact is that, in that case, it would not be an actual absolution to her; whereas, if it were for theft and some other cases in which she acted under compulsion, the effect would be different.

5489. With the exception of murder it would be a defence to the charge you think?—It would. At the same time, I must say, there is no written law upon that subject. The very same observation applies, in the same degree as far as the law goes, to the child who acts by order of his father. In the same way, he has no will of his own; and, it is upon that principle, that the wife is supposed to have no will of her own, except in those cases of crime which are supposed to be known sufficiently to any one. In the case of the famous La Valette, who was convicted for high treason by the Court of Paris, his wife went and took him out of prison: any other person who had done such an act as that would have been punished; but the wife was absolved. We would follow the same principle.

5490. There is also another question with regard to how far control is a defence to a criminal charge, where the control is exercised by another party, not the husband. Take the case, for instance, of a person exercising the control of violent threats; how far would that be admitted as a defence?—When clearly proved, all such control would be taken as a discharge.

5491. Would it be so in the case of a third party threatening another where they were quite indifferent persons?—We should not take that as a defence here certainly.

5492. (To the *Procureur.*) Do you agree that control exercised by a party in the relationship of a father to a child, or a guardian to a ward, or a master to a servant, would be permitted to be given in evidence as a defence to a criminal charge?—It would be admitted in evidence; but how far it would go would probably depend upon circumstances, and also upon the sort of crime committed. I do not think it would be of any use in murder, for instance.

5493. Is it your legal opinion that, in other crimes if proved to a particular extent, it would be a ground of defence?—Yes; a father obliging his child, for instance, particularly if that child were young, to commit a small theft or to sign any particular name on a bill of exchange which was a forgery, that would be admitted to be pleaded as a defence.

5494. Mr. *Jeremie.* I think it may be said that, if proved, it is a discharge. As matter of course any counsel would plead that in mitigation.

5495. (To *Mr. Jeremie*) The question is confined to whether it would be a defence to the charge?—I think it would.

5496. But in the case of parties not standing in such relationship, you think it would not?—No. That is a case where the Procureur would come in. The party might plead it; and the Court would take it for what it was worth.

5497. It would not be a defence to the crime?—No, not in the case of a third party.

5498. The *Procureur.* No case like that has occurred for the last forty years.

5499. Mr. *Carré.* The question to be considered by the Court then would be how far, in the circumstances of the case, it would be possible for the party under restraint to avoid com-

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mitting the act. Suppose the case of a young child, just fourteen, who was induced by a parent to commit a criminal act; the circumstances under which he was induced to do so would weigh with the Court, and in some cases might amount to an answer to the charge.

5500. Mr. *Jeremie.* What the Lieutenant Bailiff has said is just what I was going to say. It is laid down in the 64th Article of the Code Napoléon as a ground of discharge "lorsqu'il a été contraint par une force à laquelle l'accusé n'a pu résister." If a third party is in that position, it is a discharge to the action; but, if he is otherwise, then it is not.

5501. The *Bailiff.* All I have to observe upon this is that all the opinions which have been given and which can be given with respect to it are mere matters of speculation on the general principles of law, no case having occurred; and, if one did occur, it must be thrown back on the common law of the island.

5502. There is nothing, is there, in Terrien or in the Approbation, which treats of the case of a wife pleading her husband's coercion or of the other cases which have been referred to?

Mr. *De Jersey.* No; I do not think there is: and, for that reason, I took care to state we had had no case for the last forty years. In point of fact, we have no positive law upon it.

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*John De Havilland Utermarck,* Esq., Contrôle de la Reine, further examined.

John De Havilland Utermarck, Esq., Contrôle de la Reine.

5503. The fifth query is: "When a party is charged with an offence, what is the result, if it appears that he was not the actual perpetrator, but was present at the time and assisted the actual perpetrator by counsel, watching or otherwise." The hypothesis is that he is charged with the offence, not with assisting. Is it in your law the case that that difficulty cannot often arise?—It cannot arise upon the first point at all.

5504. You charge the offence, and the fact of assisting; both ways?—Yes. A person indicted for having committed an offence, the proof being that he was *present* at the time and assisted the actual perpetrator by counsel, watching or otherwise, might be found guilty of the offence.

5505. Suppose a man were aware that another man was going to murder a third; that would not constitute the crime of murder. But, suppose he were to say, while the act was being done, "Make haste, here is a police officer coming." Could he be indicted for the murder?—Supposing he were to assist him by counsel, watching or otherwise, at the time the offence was committed, he might be indicted. The charge would be: "A. B. *seul, ou avec son complice ou ses complices.*" The accomplice, in that view, would be the person actually having committed the murder.

5506. As to the second case: "That he was not present, but instigated or assisted the actual perpetrator before the time of the perpetration:" what do you say?—He would be acquitted. Supposing him to be indicted for the offence itself, and the proof to be that he instigated it before, he would be acquitted certainly.

5507. The *Bailiff.* If he had supplied the material with which the offence was committed, he would be tried for having so done. I mention that, as an instance of *complicité* previous, because it is one I have happened to see.

5508. The *Contrôle.* Any number of persons may be indicted separately for the same offence in the form "A. B., soit seul, ou avec autres son complice ou autres ses complices." It is usual, in practice, to indict all on the general charge, adding the particular circumstances specially affecting each offender in his indictment only. In the second case, it would be a special indictment naming the particular facts in which his complicity consisted. As to the third, he would be acquitted also.

5509. The answer to the sixth question is that he would be chargeable with the principal offence in the first case supposed in question five?—Yes.

5510. In answer to the second part of the sixth question you would say that in the second and third case he would be charged with specific participation?—Yes.

5511. All the gentlemen say, in answer to question nine, that you have no such thing known as constructive presence?—No.

5512. What the Commissioners meant was of this kind, whether the person must be in sight to constitute presence?—We have nothing of that kind at all. The doctrine of actual and constructive presence does not operate at all. It would be the general doctrine of complicity, how far he was an accomplice or not.

5513. Suppose he is charged, by himself or with others his accomplices, with the crime of vol avec effraction, for instance; and it turns out that he is standing at the corner of the street on the look out; he would not be actually present at the crime?—According to our law, he might be convicted certainly. The question would not turn upon presence at all; he would be indicted as an accomplice: and then, the question would be whether the fact of complicity was established.

5514. Your answer then is that the doctrine of constructive presence cannot enter into your law.

5515. The *Bailiff.* Presence is no part of the definition of an accomplice; and therefore, it is not necessary, where it does not exist really, to supply it by a fiction.

5516. Is it any part of the question of complicity whether the complicity is before or at the time of the crime?

The *Contrôle.* Yes certainly. In a case of complicity before the crime, he could not be convicted for the crime itself.

5517. The *Bailiff.* I doubt whether that is so.

5518. The *Contrôle.* I can mention the case of a person having bought faggots for the committal of the crime of arson; and that person could not be tried for the crime of arson.

5519. The *Procureur*. In the case of a person having given ladders and false keys, I very much doubt whether the indictment would be quashed.

5520. The *Contrôle*. The specific way in which he has assisted is put in the indictment; and he is convicted for that: but I conceive that any person indicted for the crime itself, supposing all the proof against him was that he had furnished the means of committing that crime, but had had no participation in the actual committal of it, could not be convicted.

5521. Your expression is, if he had furnished the means but had had no participation. Is furnishing the means not considered as a participation?—No; that must be specially laid; that is my opinion.

5522. The *Bailiff*. The time is more material to the indictment here than it is in England. It is necessarily so where all the information the accused has is from the acte d'accusation itself, and not from the knowledge of what has been deposed against him. I will suppose a vol avec effraction has been committed here on Monday, and that the act of the party accused was an act of preparation committed in the Island of Herm on Saturday; that he furnished materials and gave them to a person there. If he was charged simply with the original offence of a vol avec effraction in Guernsey on Monday, if he wanted an alibi he would prove himself to have been in Herm on that day. The time and place would be mis-stated; and, his attention being called to a wrong time and place, a conviction under such an indictment would be obviously unfair. The proper way of doing that, I apprehend, would be to say that he committed the vol in Guernsey, in that he, on the previous day, at a different place, prepared the means for effecting it. I suppose the consequence arising from the want of regularity and the want of legal definition of the offence would be matter for the discretion of the Justices at the trial.

5523. (To the *Bailiff*.) Suppose the objection were, not that he had not committed the vol, but that the way of his committing it was insufficiently described; what would be the proceeding? Would you quash the acte d'accusation and order another?—To that I suppose you would have the same answer as before. I take it, according to the custom usually followed, the man would escape.

5524. The *Contrôle*. I quite agree with the proposition of the Bailiff: but it appears to come exactly to what I said, that the second case supposed in the fifth question would require you to lay the particular points in which the instigation or assistance had taken place, and that, if you did not do that, the indictment must fail.

5525. (To the *Contrôle*). The Commissioners understand your answer rather to be, that charging him with the principal crime would be charging him with what he had not done?—No; you may charge him with the crime, provided you add the particular way in which he has instigated or aided its commission.

5526. The Procureur says, in his answer to the second case suggested in the fifth question, that, if the accomplice furnished a housebreaker with ladders or false keys, he might be convicted of the principal offence.

The *Procureur*. The time and place in which his assistance was given must be stated. The indictment must run, that such a man, with his accomplice or accomplices, committed such a robbery, he, the said accomplice, having given ladders or false keys for the purpose, and knowing the purpose for which they were intended of breaking into and getting into such a house; and, if those facts were omitted from the indictment, though I do not know a single case, I think he would be acquitted.

5527. The *Contrôle*. Then we are all agreed in our opinions upon that point.*

5528. Does the acte d'accusation state the facts of the case?—Yes; the particular facts affecting each prisoner.

5529. The *Bailiff*. There is one answer which I have given I should like to have struck out, where I spoke of materials being supplied as being a substantive offence. I had in my mind then a different case; and it was incorrect.

5530. (To the *Contrôle*.) We find, from your answer to the tenth question, that each person is charged in a single indictment; but that, when the evidence is the same, the evidence is heard collectively?—Yes. That is by consent; because certainly each prisoner might insist upon the whole evidence being gone over again. It is always the practice, in those cases, for the Crown officer to ask the counsel whether they agree to that. I consider that, in strictness, the counsel for the prisoner might insist upon all the evidence being gone over in each case.

5531. So that a man might insist upon being tried altogether alone?—Yes; it is a mere matter of convenience that it is otherwise; and it is supposed, in fact, that the evidence is heard separately.

5532. Would it stand so in the record?—Yes.

5533. The 12th question is with regard to the limitation of time within which a person can be prosecuted?—There is a specific law for that. Terrien, lib. 12, ch. xviii., p. 502. —" L'en doit sçavoir qu' aucun ne peut suyr de meffait qui, dedãs l'an et jour, n'ait esté mõstré à la justice, et dequoy la clameur n'ait esté faite sicomme elle doit. Mais de meurdre peut-on suyr quand certain signe et enseignes en sont monstrees par loyal tesmoignage du pays, par qui l'en sçache certainement du meurdre qui a esté fait. Plainte d'excez et mal façons de

* The following is the provision in the Code Pénal with regard to complicité. " Seront punis comme complices d'une action qualifiée crime ou délit, ceux qui, par dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables, auront provoqué à cette action, ou donné des instructions pour la commettre. Ceux qui auront procuré des armes, des instruments, ou tout autre moyen qui aura servi à l'action, sachant qu'ils devaient y servir. Ceux qui auront, avec connaissance, aidé ou assisté l'auteur ou les auteurs de l'action dans les faits qui l'auront préparée ou facilitée, ou dans ceux qui l'auront consommée; sans préjudice des peines qui seront spécialement portées par le présent Code contre les auteurs de complots ou de provocations attentatoires à la sûreté intérieure ou extérieure de l'Etat, même dans le cas où le crime qui était l'objet des conspirateurs ou des provocateurs n'aurait pas été commis." *Code Pénal*, Lib.ii. Art. 60.

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corps se doit faire dedans l'an et jour du delict. Mais suite d'homicide et d'autre crime publique ne se prescrit que par le laps de vingt ans: comme il est dit De crime de faux."

5534. Can that be set up by the accused as a defence; or is it the practice not to institute a prosecution, where the crime has been committed so many years before?—If the Crown were to institute a prosecution after twenty years, the counsel might plead that point. But, I conceive, the Crown lawyers would not do it, as the date must appear upon the acte d'accusation. No doubt the Court would allow it.

5535. The *Bailiff*. With us, the time is much more material than it is in the English practice.

5536. The *Contrôle*. With regard to the time, every accusation is considered to be necessarily laid within a month of the real time.

5537. Must not you in some cases say at a time unknown?—I have never known a case of it; and I do not think it would be admitted.

5538. Does not the suite d'homicide, mentioned in Terrien, apply to the suit of the party injured, and not to the prosecution on behalf of the public?

The *Bailiff*. I think suite de meurdre was the same thing as an appeal of murder in England. I think, as suite de meurdre ceased to be put in force, the present mode of prosecution took its place. Suite de meurdre was by loy apparissant, that is wager of battle, termed in Magna Carta, "Lex manifesta." The loy recognoissant was intended as a substitute for wager of battle, and is applicable to all cases formerly triable by wager of battle. This appears from ch. lxvii. of the Coustumier, and from the Brief d'establie, ch. cxiii., which coincides with the reasons given by Glanville for introducing Recognition of Assize into England. There were two kinds of Recognoissance, Brief d'Establie for land, and Brief de Sourdemande, where the Lord made surcharge of services. They were a substitute of Wager of Battle in Normandy as in England; and so received the name of Loy Apparissant. But I do not see but that Enquête might be in case of suite; that is, parties might agree to put themselves on the country. I imagine this always to have been the law in Normandy: that twenty years prescribes the crime.

5539. (To the *Bailiff*). In matters of Police correctionnelle, is not a year and a day the time of limitation?—No; that is in cases en adjonction. All cases en adjonction are limited to a year and a day, and also cases au Police correctionnelle for assault, petty cases.

5540. The *Procureur*. In the case of actions upon Acts of Parliament for penalties, the limitations would be provided for by the particular statutes.

5541. (To the *Contrôle*.) Does this Court possess any Admiralty jurisdiction?—That is a very difficult question indeed.

5542. Are there any instances of its exercising it?—In cases en adjonction, the Court has allowed proceedings for ill-treatment at sea, where this port was the first to which the vessel had come after the ill-treatment.

5543. Was the case of the Danish boy a case of that kind?—No; in the case of the Danish boy, the ill-treatment was alleged to have taken place in this Island. The case would have arisen, if an injury had been committed before he arrived. I can give you one or two cases en adjonction: and I conceive the Court would apply the same principle in a case of crime. Also the Court have held, in a case en adjonction, that, where the vessel belonged to Guernsey, a suit might be entertained here for ill treatment, although the vessel had touched at other ports, on the ground that this was the first English port. There is a case, in 1836, in which a man of the name of Mason was ill-treated at the Havanna; he remained there some days; and from there the vessel went to Rotterdam, and remained there three days, and then came here. The captain was then sued here for ill treatment; and it was ruled that, as the captain was a native of Guernsey, and the vessel belonged to Guernsey, and Guernsey was the first English port where the vessel had touched, the action might lie.

5544. There you had all the requisites?—Yes.

5545. In one case, you said, the fact of the vessel belonging to Guernsey, was considered to draw the jurisdiction, though another incident of its being the first port failed?—I consider the principle is, that Guernsey is the first English port. That is the way in which it applies to Guernsey vessels.

5546. Suppose a vessel lay a month in St. Malo, and then came to Guernsey, that would not intercept the jurisdiction you think?—No; I suppose not, according to that.

5547. In the case of a murder by a native of Guernsey upon a native of Guernsey on board a Dutch ship, if the ship came into this port, should you have any jurisdiction?—There is no precedent; and there is no law applicable to the case at all that I know of. I should incline to the opinion that the prosecution would take place here; but what points would be raised, and how they would be decided, I cannot say; nor have I any analogy to assist me. I do not know a single precedent of a crime committed out of the jurisdiction.

5548. Mr. *Le Retilley*, (Jurat). In the case of the vessel coming here having touched at the Havanna, I think, the man was not allowed to go on shore with the captain after the crime was committed; so that this was the first port where he could possibly obtain redress. I have always considered that, if an individual who complains of a wrong has had an opportunity to obtain redress in any port, he cannot bring any action here.

5549. The *Contrôle*. I see, in the case I have referred to, the Jurats were not unanimous: so that there must have been some doubt about it. I see another case, in 1827. George Macpherson, formerly a sailor on board a Guernsey vessel, the "Sophia," actioned the captain for ill treatment, in June, 1825. The captain pleaded to the jurisdiction in abatement, on the ground of having gone to other ports, and also pleaded the prescription of a year and a day. The Court, on the ground that the vessel had only come back to Guernsey in the year 1827, when the action was entered, admitted the action, though it was proved that it had gone to other ports.

5550. Was that a Guernsey vessel?—Yes.

5551. And Guernsey men?—Yes. Those are cases en adjonction; they are not cases at the suit of the Crown. I believe there is not a single case en crime, which can be cited upon this subject.

5552. Mr. *Jeremie.* I think the only point, in which there has been a clear and precise rule, is with respect to the offences committed on land. Suppose a master ill treats an apprentice at Rio Janeiro, the Court have admitted such an action.

5553. (To Mr. *Jeremie.*) Suppose a murder in England; how could you have jurisdiction to try a murder in England?—I am talking of assault, or cases of damages. I should say, in the case of a Guernsey ship going into the port of Liverpool, if the master ill treated his apprentice, and, on his arrival here, the apprentice arrested the master and brought an action of damages, this Court would try it en adjonction.

5554. Mr. *Carré.* I think not.

5555. Mr. *Jeremie.* In the case of Guernsey vessels that go to Rio Janeiro, when an action has been brought against the master, they have not yet admitted the plea to the jurisdiction to be good.

5556. The *Procureur.* The jurisdiction of the Court is "de omnibus casibus in dictâ Insulâ."

5557. (To Mr. *Jeremie*). Suppose the offence occurred between any two natives of Guernsey at Rio Janeiro; do you think the Court would claim to have jurisdiction in such a case?—No; the jurisdiction is supposed to follow the ship.

5558. There is a passage in Terrien, lib. xii. c. xxiv. page 494. "De Recepteurs et Complices de Malfaiteurs. Tous Recepteurs qui receptent les forjurez, les forbains, les damnez, et ceux qui se defuyent à venir à la paix du Duc qui ont esté appelez, doyvent estre mis en la prison du Duc. Et s'ils sont trouvez coulpables ils doyvent perdre tous leurs meubles à la volonté au Duc ou au Bailly. Et s'ils n'ont meubles ils doyvent estre chastiez par longue prison. Les consentans aux larrons en leur larcins et ceux qui les receptent doyvent estre punis en autre maniere. Car s'ils en sont attaints, ils seulent en Normandie emporter autelle peine comme les larrons mesmes: et aussi tous leurs parçonniers et consentans de leurs meffaicts." Do the words Recepteurs de Malfaiteurs mean what we should call "comforting the offender;" if so, they appear to be punishable by loss of chattels and imprisonment?—Yes.

5559. But a person consenting is liable to the same punishment as the thief?—Yes.*

5560. Do you hold that to be law?—Certainly; accomplices are held liable to the same punishment as the larrons. Mr. Le Marchant says at page 196 "Les complices des malfaiteurs et de leurs méfaits, récepteurs de larcins, y consentant ou participant, doivent estre punis, de mesme peine que les larrons et autres malfaiteurs mesme." By "récepteurs des larcins," I take it he refers to receivers of stolen goods. They are liable to the same punishment, as the thief. With respect to the proceeding for comforting the thief, I do not think there is any precedent for it.

5561. What is the difference between *the offences* which are classed under the head of "peine, punition ou châtiment corporel" and those the punishment of which is only imprisonment? In each case the party, it appears, may be subjected to imprisonment?

The *Bailiff.* In the one case you may inflict the additional punishment of flogging, pillory, or deportation for seven years. The word imprisonment is included under the word "punition."

5562. (To the *Bailiff.*) "Félonieusement" you all interpret as something which subjects to confiscation of goods?—Yes.

5563. In the Coustumier and Terrien there are definitions of félonieusement, according to which félonnie seems to imply crimes of violence. You apply it to all crimes liable to be punished by la mort civile, which includes confiscation? †—I believe those views are both true, pretty nearly. I do not think there would be any act of felony at common law which was not an act of violence.

5564. Does that hold *vice versâ*?—Certainly not.

5565. According to the Coustumier, if beating accompanies any act it becomes a felony?—I think it must be a very violent beating to amount to a felony.

5566. The *Contrôle.* Every case where there is confiscation is laid félonieusement; but the converse does not hold.

5567. The *Bailiff.* Every case which is laid félonieusement may be punished with a punishment to which confiscation is incident.

5568. (To the *Bailiff.*) Then that would be at present a complete definition of felony, that it involved confiscation?—Yes.

5569. Can you distinguish "*crime*" and "*délit*" by any general definition of the act?—I am unable to do so. We do not use the word "délit."

5570. Do you use the word "*contravention?*"—Contravention with us would mean the infringement of some Ordinance.

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* "Les complices d'un crime ou d'un délit seront punis de la même peine que les auteurs mêmes de ce crime ou de ce délit, sauf les cas où la loi en auroit disposé autrement."—*Code Pénal*, Lib. ii. Art. 59.

† "L'en doit sçavoir que si violence ne fust expressément mise en la clameur, bataille n'en doit pas estre gagee. Car en toutes suites où l'en tend à mort d'homme, doit-l'en dire en la plainte, que ce dequoy l'en se plaint, fut fait en felonnie, et en la paix de Dieu et du Duc."—*Coustumier*, Chap. lxxv.

Et pourtant toutes telles manieres de suites, sont appelees suites de felonnie par la Coustume. Et est icy interpreté un outrage commis par felonnie, qui est commis par force et violence, et de courage meu, en intention et volonté de mal faire: à la difference des cas qui se commettent *extra animum*, et sans y penser: *scilicet per impetum, aut lasciviam, aut ebrietatem, aut levem culpam*, dont est parlé en l. i. iun. gl. C. *Si adver. delic.* Autremẽt Felonnie signifie la faute ou offense, cõmise par le vassal enuers son seigneur.—*Terrien*, Lib. xii. chap. xxviii.

GUERNSEY.

Robert MacCulloch, Esq., Advocate.

October 8th, 1846.

*Robert MacCulloch,* Esq. (Advocate), further examined.

5571. Question No. 4 of the third Series refers to the age at which a person can give evidence. Are the Commissioners right in saying that, in practice, a person below the age of puberty is incompetent as a witness?—Certainly; totally incompetent both by practice and by positive law.

5572. In practice, is any inconvenience found from that rule?—A very great inconvenience.

5573. Perhaps, in some cases, a failure of justice altogether?—I think that might occur. I have not present to my mind any particular case, in which it has occurred; though it is my impression that cases have occurred within my knowledge.

5574. A witness becomes incompetent in case of a conviction for crime; does that extend to every crime?—That is a question upon which some doubt and difficulty must exist; but, in practice, I have scarcely ever known a question raised upon the subject. However, I ground the answers which I have given on the subject, in my written replies, on the law, as I find it laid down, in Terrien Lib. ix. chap. xxxiv. page 393, which is indirectly approved. This applies entirely to civil cases: but, in practice, we apply the same rules to criminal cases.

5575. Are the rules of evidence the same in civil as in criminal cases?—They are. In practice, we follow this chapter as law in civil and criminal cases. It is, however, quite clear that we have misunderstood some portions of it. What I find as to disqualification on the ground of crime is this, which evidently applied, not to witnesses giving evidence, but to the recognitors, if I might use the word.

5576. The tryers?—Yes; they are spoken of in a great many chapters in Terrien.

5577. What is the text in Terrien which refers to the recognitors?—There are several passages; perhaps, I had better read the chapter. It begins at the bottom of page 393. It is an extract from La Coustume au chapitre. De Jureurs. "Les especiaux amis, ne les ennemis, ne les cousins à l'une partie ni à l'autre, n'aucun de qui l'en puisse par certaine raison avoir soupeçon d'amour, ou de hayne, ou de lignage, ne doivent pas estre receuz au serment."

5578. Does this rule apply to witnesses?—We apply it to witnesses now; but, originally, it did not apply to them. It then proceeds: "Ne ceux qui ont semblable querelle: ne ceux qui l'ont menée ou defendue en cour ou maintenue ou esté conseilleurs. Ne ceux qui sont prochains de la chose demandée; ne ceux qui ne rien sçavent de la chose, dequoy contens est, et qui ne sont du temps ne du lieu dequoy ils en puissent rien sçavoir, ne doivent estre receus. Ne ceux qui sont reprins de parjure, ou de porter faux tesmoin; ou ceux qui sont infames; ou qui sont communément blasmez d'homicide, d'arson, de larcin ou d'aucun autre crime, dequoy il n' est aucun qui les suive." Practically, we apply this to "témoins de certaine."

5579. All parties named here are incompetent as witnesses by your law?—Yes; with this limitation, which will be found in Terrien's own comment. "*Mal renommez.* Cecy est special en ces deux crimes de parjure et de mescreantise; c'est à dire d'héresie et de mal sentir de la foy, que la renommée suffise pour debouter un tesmoin. Car, en autres cas, le saon ne seroit suffisant; ne mesmes que le tesmoin eust esté accusé de crime, si on ne maintient qu'il en ait attaint et conuaincu, ou qu'il en ait composé par argent." You must prove the conviction.

5580. So that, in all cases, except perjury and the want of religious belief, you must establish the crime by proving the conviction?—Yes.

5581. Do you understand, from that, a disqualification for perjury might be established, without conviction?—I understand that that was the case. I might prove that he had committed perjury, without producing the conviction. At the bottom of the same page we find: "Reproches de tesmoins en terme generaux ne sont recevables, d'estre infame, parjure, homicide, voleur ou autrement; sans specialement exprimer le lieu et temps du delict commis, ou la sentence sur ce ensuyvie, et de quel juge pour sauoir s'il est competent ou incompetent et autres circonstances."

5582. It is impossible to suppose the Chapitre de Jureurs was originally meant to apply to the witnesses, because some of the qualification required would be ridiculous?—Yes; it shows that it applied to the recognitors.

5583. By the law, as it exists at present, parties guilty of the different crimes mentioned would fall within the scope of the passage just read. They would be incompetent; with this, that you may object to persons guilty of perjury, or without religious belief, without proving the conviction?—Yes.

5584. (To the *Contrôle.*) In your answer, you say *conviction* of perjury. Is that the modern interpretation?—Yes. I do not conceive, in practice now, an allegation would be sufficient.

5585. Nor proof?—No; that would not be admitted.

5586. Mr. *MacCulloch.* I doubt whether the Court would permit me to go into proof of perjury now, except by producing a conviction.

5587. In practice, you could not exclude a person's evidence by accusing him of perjury?—I think that would not be allowed now.

5588. How has the change arisen?—It has changed, liked many other points, by time.

5589. It has been found to be inconvenient, and has been altered without an Acte?—Yes.

5590. (To the *Contrôle.*) In your written answers you follow the catalogue in Terrien, except that you make one variation. You spoke of "other *public* crime." Did you mean any particular limitation by the word "public?"—No.

5591. You mean generally anything subject to a prosecution?—Yes.

5592. Mr. *MacCulloch.* I may have made use of the word "public" also. If I have done so, it was to distinguish between a case for which a man would be regularly tried before the Cour en Corps, and a mere police case.

5593. The *Contrôle.* There is a case in which this law has been set aside. I rather think, in the conspiracy, the counsel offered to prove that one of the witnesses for the Crown had

been guilty of perjury; not had been convicted of it, but had been guilty of it. He tendered evidence to that effect, and the Court refused it and admitted the person as a witness.

5594. (To the *Procureur.*) If a man swears he will do a thing and does not do it; is he held to commit perjury?—Yes. In all our contracts for real property no property belonging to a wife can be validly sold. But, to meet that, the wife takes an oath by which she says, she sells of her own free will, without the control of her husband, and that she will never recede therefrom on pain of perjury. Suppose a man is brought up for a small offence; instead of taking bail in money, we take his caution juratoire: and we have cases, at least we have a case, for I only know one, I believe, about seventy or eighty years ago, where a man who promised not to leave the Island gave his caution juratoire. He afterwards left the Island; and there was an action entered against him for perjury. I do not find the judgment.

5595. At what time is the perjury held to be committed?—At the moment he does that he has promised not to do by his oath. He promised not to leave the Island; and the moment he left it the perjury was committed. In the third volume of Jousse *Traité de la Justice Criminelle, Partie Quatrième,* titre xxxviii., I find "Le parjure, contre lequel les loix civiles ont établi des peines, est un serment fait en Justice contre la verité, ou le violement d'un serment fait en Justice. Ainsi, 1°. Un témoin qui dépose faux en présence du juge après avoir fait serment de dire la vérité, commet un parjure. 2°. Il en est de même de celui qui affirme une chose fausse en conséquence du serment décisoire qui lui a été déféré par sa partie adverse. 3°. Ou, quand une partie interrogée en Justice par la voie du serment, repond faussement sur les faits sur lesquels elle est interrogée, soit en matière civile, soit en matière criminelle. 4°. Ou quand une partie, à qui le juge a déféré d'office le serment, affirme comme vraie une chose fausse. 5°. Celui qui promet une chose en Justice avec serment et qui viole sa promesse, commet aussi un parjure."

5596. Perjury, then, we understand you, may mean not the taking a false oath, but breaking a true one?—Yes. The limitation of a year and a day would run from the supposed violation. In many cases, if we were not to take this means of requiring the party to take an oath, we must take bail instead of it. In a case en parjure under such circumstances, the action is entered in a milder way, which could only go to a fine in money or an imprisonment.

5597. The *Bailiff.* The passage in Le Marchant only speaks of false witness; it does not use the more general word of perjury.

5598. The *Procureur.* Here, often, the decision of causes is left by one party to the oath of the other. In the case of actions for a payment of 50*l.*, one says "I do not owe you 50*l*;" the other says "You take your oath of it." There must be some punishment for a false oath in such a case.

5599. (To the *Contrôle.*) What crime would you exclude from your answer when you speak of a conviction rendering the party incompetent as a witness?—Misdemeanours, I think, would be excluded. I consider it applies only to felonies.

5600. Do you think that the answer to the question "Whether the offence were punishable by death," would be the test?—Yes.

5601. Should you include larceny?—No.

5602. (To Mr. *MacCulloch.*) Are there not other causes which render a party incompetent? Take the case of a husband against a wife, or a wife against a husband; is there any exception to that?—I conceive not.

5603. Could a wife give evidence to prove ill-treatment of herself on the part of a husband?

The *Procureur.* I understand the law to be that she is not admissible; and in a case which occurred of that kind the wife was not produced.

5604. Was she tendered and refused?—No; she was not refused.

5605. Mr. *MacCulloch.* I have often heard the Court en Police refuse to hear a wife complaining of ill-treatment on the part of her husband. This is founded on a passage of the Coustumier, Brief de Mariage encombré, chap. c. It is also found in Terrien Lib. II. Chap. I. p. 16, which says: "Ne peut la femme rappeller ce qu'il" (that is the husband) "fait; ne estre ouye, tant qu'il viue, en derriere de luy; mais ils doyvent estre ouys ensemble de toutes les choses qui appartiennt à elle." That is a wife cannot enter or defend an action without the presence of her husband. Then comes the exception: "Mais elle doit estre ouye en derriere de son mari, s'il la mehaigne ou luy creve les yeux, ou luy brise les bras, ou il a accoustumé à la traiter vilainment." If he ill-treats her, she may obtain redress; but it does not mean to say that she can be heard as a witness.

5606. The *Bailiff.* You will find that very clearly if you look at the Coustumier, title Brief de Mariage encombré.

5607. (To Mr. *MacCulloch.*) Do you think that a wife not being allowed to be heard is an inconvenience?—I think she might be heard, when she has reason to complain of personal violence to herself; but in that case only.

5608. The *Bailiff.* I apprehend the limits of the English law to be the proper ones.

5609. (To Mr. *MacCulloch.*) What are the other causes of incompetency?—There are degrees of relationship. In Terrien, Lib. ix. c. xxxiv. page 393, we find: "Ne peuvent personnes jointes, comme le père, la mère et le fils, la femme et le mary estre produicts ne pour ne contre ceux à qui ils attaignent ainsi près." In the next article, in the Coustumier, we find the brother mentioned: that appears clearly to be law. We also find in Terrien, "Aveugles ne sourds ne peuuent porter tesmoignage; ne personnes conjointes, sicomme sont le père et le fils, et le frère, qui sont prochains du lignage: ne ceux qui sont en non aage ne ceux qui sont attaints de pariure ou de foy mentie: ne ceux qui en sont mal renommez."

5610. Those parties, the father, the mother, son and brother, are still excluded, are they?—Yes. We have gone much farther than that; for we have applied the next passage in Terrien, which I have already read, *Au chapitre De jureurs,* to the rejection of first cousins. It is clear to me that they were allowed to be witnesses in Normandy, though they could not be jureurs.

GUERNSEY.

Robert MacCulloch, Esq., Advocate.

October 8th, 1846.

5611. That you think another instance of a wrong construction put upon the Coustûmier?—In my opinion it is: and, upon that principle, in practice, uncles, aunts, great aunts, nephews, nieces and grand nieces, by consanguinity or alliance, are all excluded.

5612*a*. You take in nearly every relation except second cousins?—Yes; first cousins once removed. Besides those, I conceive, if you take Terrien strictly, you will find it bear out Mr. Le Marchant that, if the presumptive heir should be further off than a first cousin, he could not be admitted as a witness. I have never known the question to be tried here; but that I understand to be the law.

5612*b*. Those cannot be witnesses for prisoners?—Yes. The Crown may call them all, except the wife. It is generally understood that no person who is accused can be bound to declare. I know there are one or two decisions rather to the contrary; but the general practice, I believe, to be as I have stated.

5613. They are not bound to give evidence for the Crown, where they could be rejected if brought on the other side?—Exactly so. In Scotland that was formerly the case: and there was an act of Parliament passed to do away with it.*

5614. The *Bailiff*. It did not go further than brothers.

5615. (To Mr. *MacCulloch*.) Those are the parties who are incompetent as witnesses, by reason of relationship?—Yes.

5616. In a cause en adjonction, how is it?—Relations on both sides would be excluded. Any persons standing within any of those degrees of relationship to the plaintiff would be objected to and rejected.

5617. It would not extend to the relations of the learned persons who are adjoined, would it?—No.

5618. Is not it the fact that, in a place like this, where parties are so much connected by marriage, the practice is very inconvenient?—I think it is exceedingly inconvenient; so much so that I brought the subject under the notice of the Court about a year ago; and some measures were taken for the purpose of applying a remedy: and, I believe, the thing is nearly in a position to be laid before the States.

5619. That change probably might be considered as tantamount to the alteration of a written law, and would require the sanction of the Privy Council to enable you to make the alteration?—Yes.

5620. It is stated in the written answer to the eighth Question, that "A party charged with an offence is not capable of being a witness for or against a party charged with the same offence." How, technically, are the offences identified?—That might arise in this way. Two parties are charged, one with theft, and another as being a receiver. You would not allow the man who was charged as receiver to be a witness for the party charged with the principal offence.

5621. In that case, the charge for the receiving would probably allege the theft to have been by the other man?—Yes.

5622. Suppose you were trying the thief; the charge against him would not name the other person. If you excluded the receiver, how would you identify the offence?—It would be rather difficult to do so. This point generally arises in cases en adjonction. Suppose a party to bring the same action against three or four others for having slandered him, those parties would not be allowed to be witnesses one for the other.

5623. Would they be all charged separately?—Yes.

5624. If two men, each of them, called me an opprobrious name, those would surely be separate crimes?—Supposing they all slanderously charged me with having committed a crime on a certain day, they would be charged separately. One of them could not be allowed to call his accomplices.

5625. Suppose one man to charge you with committing a theft at eleven o'clock, and the other at twelve?—That would be a cause semblable.

5626. You would have to establish the fact of the men being charged with slander in order to exclude them?—Yes: you must prove that at the trial.

5627. Suppose you brought a cause en adjonction against me, and I called another who was by to prove that I did not utter the slanderous words; might you say to the witness, "You cannot give evidence, for you also called me a thief?"—I must have brought an action against him.

5628. You must go into evidence to prove the fact, in the case of the action against me, must not you?—Yes.

5629. Suppose I call a person to prove an alibi; would it be an answer to say the witness is a party to the same theft?—If he had been charged. Reputation would not be sufficient.

5630. Then he might say, "I am charged with a theft, but it is not the same." Should you be allowed to go into evidence to prove the identity?—Yes; I should think so.

5631. In your mode, several are put in the same indictment or Mise en accusation. In that case, can one be evidence for the other?—It is generally considered that a man who is under a similar accusation is not a competent witness.

5632. Would a charge of theft upon another man, upon another day, exclude him?—I am not prepared to say that.

5633. Do you go to the length of saying it need not be actually the same transaction?—I do, certainly.

5634. Suppose one were acquitted; could he be evidence for the next man?—Yes. The acquittal gets rid of the incompetence arising from the charge.

5635. Does the exclusion hold both for and against the prisoner?—Yes.

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* Statute 3 and 4 Vict. c. 59, "An Act for the Amendment of the Law of Evidence in *Scotland*."

5636. Then it is an advantage to be tried second or first, according as a man may testify against you or for you?—Yes.

5637. You would probably think that an additional reason for trying such persons together, and not separately?—Yes.

5638. Would it be open to one person, where several are charged with a crime arising out of the same transaction, to say, "I insist upon A. B. being tried first; because the facts against him are very slight indeed; he must be acquitted; and I wish to avail myself of the benefit of his testimony"?—Certainly not.

5639. Might that be a ground of application to the Court for the exercise of its discretion?—Yes. It could not be claimed as matter of right.

5640. If all of them were tried together, at the conclusion of the evidence for the accusation might not one of the prisoners say, "I demand to have one of these parties acquitted because there is no evidence against him, that I may use his testimony"?—That would require a special law for the purpose. The rule is now that, when witnesses have been sworn, no further witnesses can be called, except by consent.

5641. (To the *Bailiff*.) Do you agree to the law as to the exclusion of witnesses, as stated by Mr. MacCulloch?—Yes; I am not quite sure whether I should limit the "cause semblable" quite so much as Mr. MacCulloch does.

5642. (To Mr. *MacCulloch*.) Suppose you want to prove an alibi, may relations prove that?—Yes; they are admitted, except the wife. In Terrien, lib. xii. chap. xxxvi., page 524, "Preuve du faict d'alibi. Combien qu'une negative de faict ne se puisse prouver, quand elle est pure, simple et non determinée (car alors, on croit plustost un tesmoin rapportant l'affirmatiue, qu' à mille tesmoins rapportans la negatiue) toutesfois, si elle contient determination de lieu et de temps, elle se peut prouuer indirectement. Comme si aucun nie avoir tué un homme à certain lieu et à certain jour, il le pourra bien prouver, en prouvant qu'en ce jour là, il estoit en autre lieu, voire si loin qu'en mesme jour il n'eust peu estre en tous les deux lieux. Qui est le faict d'alibi ou d'absence dont parle ceste ordonnance (*de Loys* xii. 1498). Et en ce cas, les tesmoins ainsi deposans sont preferez aux autres encores plus dignes de foy, d'autant qu'ils rapportent la descharge de l'accusé, mesmement és causes de sang."

5643. Mr. *MacCulloch*. That does not appear to me to apply to relationship, though that has been the construction put upon it. It relates to cases where blood has been spilt. In some cases a witness who has any interest in the result of a trial is not admitted.

5644. Could that take place in criminal matters at all?—In cases of forgery it might. It is founded upon a passage in Terrien Lib. ix. chap. xxxiv. p. 393, which has already been read.

5645. In what way could a conviction for forgery be used in the defence to an action on the forged instrument?—We have a procedure called "l'inscription de faux." I bring an action against you upon a bill of exchange. You say, you never signed it, it is a forgery. A prosecution for forgery takes place; and the civil proceeding is suspended while the criminal proceeding is carried on. I could not in that case be heard as a witness. In former times, there was a criminal proceeding *in rem* to try whether the document was a forgery or not, which we have lost all trace of ourselves.

5646. Suppose such a case as this. A man brings an action against me for the amount of a bill of exchange. I say, "It is not my signature." He says, "Prosecute the forger." I say, "I know who signed it, but he died last week"?—Primâ facie, the party producing the bill and claiming upon it would be proceeded against as the forger.

5647. Am I bound to prosecute a man whom I do not believe to be guilty of forgery?—That would be a subject of inquiry by la Cour Criminelle. There would be an enquête at once.

5648. A person bringing an action on a bill is liable therefore to proceedings in which he must prove that he did not forge it?—Yes; it must be shown that he was not the party who committed the forgery. The party attacking the bill is bound to prove that the offence has been committed.

5649. That is to say, not the holder but the party liable on the bill, the defendant in the civil action, is the party upon whom the responsibility of instituting criminal proceedings lies?—Yes.

5650. And, you say, it is understood that he must proceed against the holder?—Yes. He begins by saying "The bill you hold is a forgery." In Terrien Lib. xii. chap. xxviii. p. 504, is a great deal about it.

*The passage was read as follows.*

*Au Style de la Court de Parlement.*

Inscription de faux. Aucun n'est receuable à alleguer fausseté en la Cour, s'il ne maintient apud acta en personne, ou par Procureur specialement fondé, la piece produite fausse. Et se doit, en ce faisant, inscrire comme accusateur, et bailler les moyẽs de fausseté dedans trois jours: lesquels sont mis par devers ladite cour, sans communiquer, et par elle jugez s'ils sont admissibles ou non. S'ils sont jugez admissibles, l'accusateur est receu à informer sur le contenu par information secrette non communiquee, sans appeler partie à voir jurer tesmoins, L'information faite est rapportee; et si par icelle les faicts contenus esdits moyens semblent prouvez et verifiez, le Notaire, et la partie et autres coulpables de la fausseté, sont adjournez à comparoir en personne, ou prins au corps, à la discretion de la Cour. Et s'ils comparent, sont enquis, examinez et interroguez. Et s'ils n'alleguent faicts et raisons probables et apparens pour soustenir la piece veritable, est procedé extraordinairement, et le procez parfait, la fausseté déclarée. Et si par l'interrogatoire ils alleguent moyens, raisons et excuses apparens, les dits moyens de fausseté leur sont communiquez, et y respondent: et, sur les faicts hinc inde contestez, est fait enqueste et examen de tesmoins, sur lequel se donne le jugemẽt. Et si les moyens de fausseté ne sont trouvez suffisans pour faire declarer l'acte faux, aucunes fois ils suffisent pour contredire, impugner et debattre la piece. Et en ce cas, ils emportent effect de contredict et sont communiquez à la partie qui baille salvations. Sin autem, lesdits moyens sont rejettez, et la partie condamnée és dommages, et interests, et en l'amende.

5651. Does the passage in Terrien contemplate the proceedings commencing in a civil demand?—I conceive it does.

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5652. The *Bailiff.* This proceeding is as nearly as possible the same as in the modern French law. I will hand the Commissioners a book which in a very few lines explains the nature of the proceeding (*handing the same to the Commissioners*). In France it is primarily a proceeding *in rem.*

5653. The *Contrôle.* By the note* to the passage of Terrien cited by Mr. MacCulloch, it appears that the party producing an instrument objected to as forged is permitted to abandon it without any criminal proceedings, unless it is alleged that he has forged it, or that he offered it knowing it to be forged.

5654. The *Bailiff.* The attack either of the instrument or the supposed forger would suspend the action.

Mr. *MacCulloch.* The law appears to me to embrace a proceeding both against the instrument and against some party. I know no case in which the instrument alone has been gone against. It has always been, within my experience, a proceeding against some party connected with the instrument.

5655. (To Mr. *MacCulloch.*) Supposing a man should prove the bill to be false, but should fail in establishing forgery against an individual: what effect would that have upon the civil suit?—It would destroy the effect of the instrument in a civil suit.

5656. Would not the Court satisfy themselves with acquitting the prisoner?—If they did, I imagine it would be considered tantamount to declaring the instrument good.

5657. But may not the accused be acquitted, though there may be the clearest proof that the instrument is bad?—Then, I consider, there would be a special finding in reference to the suit which had been interrupted by the criminal incident.

5658. Would that special finding prevent the holder of the bill from asserting its genuineness?—Yes.

5659. Suppose the bill were never presented, but the holder attempted to destroy it. Could the party whose signature had been forged be a witness on the charge for attempting to destroy the bill?—I conceive not. In one of two cases the party was admitted, and in the other he was rejected.

5660. Is the later case the one in which he was rejected?—

5661. The *Bailiff.* In the later case, it arose incidentally to the civil proceeding.

5662. The *Contrôle.* In the first case, it was a regular proceeding for forgery; it was the case of Faulkner in 1842 or 1843. There the document had been discounted; but there was no civil proceeding. The person whose signature had been forged was admitted as a witness. The second case is a regular case of l'inscription de faux.

5663. In the case of Faulkner, the party whose name was forged was admitted to prove the forgery, was he?—Yes. I think there are other cases.

5664. Mr. *MacCulloch.* I think there are some to the contrary.

5665. The *Contrôle.* In the case of Le Sauvage, the question was this. The name had been written by the party himself: but there was a blank above the name; and Le Sauvage wrote upon it a note of hand. There he was admitted also.

5666. Was that a case where there had been no civil action?—No: there was a civil action brought upon the document; and it was upon that the question arose.

5667. When did the case of Le Sauvage occur?—In February, 1829. There is also the case of Smith; which was a forgery upon the National Bank of Ireland. I know the clerks of the Bank came over. The plate was forged, and the signature of the manager; and he came over to prove that it was not the plate of the Bank, and that the person purporting to sign as manager was a fictitious person.

5668. Mr. *MacCulloch.* With respect to the 9th of George the 4th, c. 32, a difficulty, which has been already referred to, also arises. The question is whether that Act extends to this Island or not.

5669. The *Bailiff.* And also whether it extends to such a proceeding or not.

5670. Mr. *MacCulloch.* Both questions arise.

5671. The *Contrôle.* The Act had not been registered here before Faulkner's case.

5672. The *Bailiff.* In the last case, it was decided that the Act did not apply to proceedings in this Island.

5673*a*. (To Mr. *MacCulloch.*) Have you any thing to add upon the question of the competency of witnesses?—You will find in Terrien, Lib. IX. chap. xxxiv., this expression: "ait conseillé ou comforté sa partie en la cause." *Conseillé ou comforté* is held here to mean having given advice in any way. It appears to me, however, that it only applied to parties professionally concerned in the case.

5673*b*. To what extent does the practice go?—If an objection is made to an individual, as a witness, on the ground that he has given advice, it is generally left to the oath of the party whether he has given advice or not; and the Court judges according to the circumstances.

5674. That could hardly arise, could it, in a case of criminal proceeding?—No; but it arises sometimes in a case en adjonction. A person, for instance, who has accompanied the party to his counsel repeatedly for the purpose of instructing him would not be considered a competent witness. I think that doctrine has been pushed rather far in civil cases and cases en adjonction. "Aveugles ne sourds ne peuvent porter tesmoignages." I do not see why a blind man should not be a very good witness as to what he has heard, or a deaf man to what he has seen.

5675. Is it considered to be the law here that a blind or deaf person cannot be a witness?—I think it is not followed. I have known deaf witnesses frequently examined here.

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* The passage in the note referred to is as follows. "Mais le produisant est receu à se desister de l'usage de l'instrument argué de faux: pourveu qu'il ne soit maintenu que luy-mesme a falsifié l'instrument, et qu'il ne soit jà informé de la falsité."

5676. Many objections to the law of evidence appear to have been got rid of. Are there not others in which you are met by the objection that you must go to the Privy Council in order to remove them?—Yes. Objections have not been got rid of by any Ordonnance, but by a series of decisions.

5677. Perhaps it would not be too much to say that your law of evidence is altogether in an unsatisfactory state?—That is my opinion most decidedly. There also appears to be a doubt whether "*femmes*" can be witnesses in criminal cases, though in practice they are always admitted.

5678. The *Bailiff.* It appears to me that the whole of these objections might be got rid of. There is only one point upon which I should have any doubt. I would state that the Chief Pleas have taken one step with respect to an Ordonnance for admitting the evidence of relatives beyond the degree of brother and sister. Had we been left to ourselves, that would have been proceeded with: but we thought other proceedings would be necessary, and it was left. My own opinion is that it ought to go further. My only doubt is whether you should not retain the exception as far as it relates to parent and child. And my reason for making that limitation is that I find, with all persons with whom I have conversed, so very strong a feeling upon that subject. The Commissioners will perceive that, inasmuch as the Ordonnance only went to admit the evidence of relatives beyond the degree of brother and sister, the opinion I have expressed is very far from being the uniform opinion of the Court.

5679. (To Mr. *Carré.*) Would you think it unsafe to carry the limitation further than was proposed in the Ordonnance referred to?—It is generally considered so. My own feeling, from what I have seen occurring here, is that the evidence of such near relations as parent and child and brother and sister is not safe to rely on. And, moreover, that it is putting the parties in a position in which their conviction of right and their feelings of affection are at variance.

5680. Mr. *Jeremie.* Here, you can admit father and son against but not for each other. I think, if you lay down a rule, it would be well to make it absolute in both cases.

5681. The *Bailiff.* I would wish to call attention to the circumstance that no part of this chapter of Terrien relates to a witness having evidence to give. I think it only relates to Jureurs, Recognitors and Témoins de certain. These latter were not witnesses, properly so called, but those who came to support the plaintiff in his complaint. They only swore "Je le vu et ouy et suis prest d'en faire l'esgard de la Cour." I have seen and heard, and will abide the award of the Court. Till this had been done the defendant was not called on to plead. But after he was obliged to desrene and bring with him witnesses of credence. The témoins de certain were only the secta of the plaintiff, and gave a sort of certificate of the plaintiff's cause of action. They are the same as the testes fideles mentioned in Magna Charta, ch. xxviii. "Nullus Ballivus de cætero ponat aliquem ad legem manifestam simplici loquelâ suâ sine testibus fidelibus ad hoc inductis." At the time of the Coustumier no witnesses were heard at the bar. That will appear very clearly from comparing the Coustumier, chapters lxix. and cxxiii.

5682. Mr. *MacCulloch.* When Terrien wrote, it is evident that he applied the phrase "témoins de certain" to witnesses in a cause. That appears from Lib. ix. chap. xxxi., page 383.

5683. You were going on a former occasion to say something respecting the récusation des Juges?—Terrien, Lib. ix. chap. xx., p. 365, refers to this subject. The Approbation says: "Nous usons du dixseptiesme Chapitre. Nous n'usons du dixhuitiesme. Nous usons du dixneufiesme Chapitre et aussi du vingtiesme Chapitre quand à la récusation des juges, s'il y a cause raisonable." The whole chapter is exceedingly vague. In practice, it is held that no Jurat can judge in a cause, if he stands, to either of the parties in civil cases or to the defendant in criminal cases, in the same degree of relationship as would render him incompetent as a witness. That is the general principle: and this principle appears to be more or less sanctioned by an Order in Council of the 19th of May, 1709, which I beg to hand in.

*The same is read as follows.*

Le xiv^me^ jour du mois de Janvier l'an mille sept-cents neuf, devant Mr. Le Lieutenant Bailly, présens, Messrs. James De Beauvoir, Thomas De Lisle, Wm. Le Marchant, Pierre Martin, Charles Andros, James Careye, Jean Andros, et Daniel De Beauvoir, Jurés.

L'Ordre suivant ayant été produit deuant la Cour; après lecture d'iceluy, il a été ordonné qu'il sera enregîtré, le teneur duquel ensuit mot après mot.

At the Court of St. James, the 19th of May, 1709. Present, The Queen's Most Excellent Majesty, in Council.

Upon reading this day at the Board a Report from the Right Honourable the Lords of the Committee for the affairs of Guernsey and Jersey in the words following, (viz.) "Her Majesty having been pleased by her Order in Councill of the 19th of Aprill last to referr to this Committee the humble petition of Lawrence Martin and John Saumarez, of Guernsey, merchants, relateing to a cause depending before the Royal Court of that Island against Michael Falla and Daniell Naftell, touching the disposeall of two prizes taken by the Marlborough privateer of that Island, wherein it so happened that so many of the magistracy were recused as to leave only the Lieutenant Bailliff and one of the Jurates; whereby there was not a sufficient number left to hear and determine the said cause, according to the laws and customs of that Island, and therefore the same was transmitted to this Board: Their Lordships, this day, taking the matter into consideration, and having summoned the Lieutenant Bailiff and four of the Jurats of that island who were in Town, to consider of the most proper expedient in such cases, that there might be no stop of justice for the future, do agree, upon the wholle matter, humbly to report their opinion to Her Majesty, that, not only in this but in all other causes where the partyes recuse the Magistracy, there shall be at least three left to judge the cause; and therefore, if the recusations shall be like to lessen this number of three, then the objections of Cousen Germains, in such case only, shall not be a sufficient recusation, so that justice may go on and the cause come to a hearing to entitle the partyes to appeal to Her Majesty if they think fitt; but, where a full quorum can be had unrecused, then the formes and proceedings shall stand as before.

Her Majesty in her Privy Councill approveing the said Report was pleased to order, as it is hereby accordingly ordered: That, not only in the cause afore mentioned but in all others for the

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future where the party recuse the Magistracy, there shall be at least three left to judge the cause; and therefore, if the recusations shall be like to lessen this number of three, then the objection of Cousin Germains, in such case only, shall not be a sufficient recusation, so that justice may go on and the cause come to hearing, to intitle the parties to appeal to Her Majesty if they think fitt; but, where a full quorum can be had unrecused, then the formes and proceedings shall stand as before. Whereof the Bayliff and Jurats of Her Majesty's Royall Court of Guernsey, and all others whom it may concerne, are respectively to take notice of this Her Majesty's pleasure, and govern themselves accordingly."

(Signed) JOHN POVEY.

5684. Does "récusation des Juges" apply in criminal matters?—Yes.

5685. Have you known any such objection taken in criminal matters?—Yes.

5686. Is not there some récusation in consequence of the mutual relationship of the Jurats to each other?—I have never known of any.

5687. Is there none in the law?—None strikes me at this moment.

5688. The *Bailiff.* There is a regulation, I believe, that father and son shall not be Jurats at the same time. There was a case in 1629, in which that rule was infringed by the Governor of the day. The son having been elected, and it being required that he should be sworn in, the Court took a long time to consider it: and he was sworn in upon condition that the father and son should never sit in Court together. The acte of Court is motivé by this fact, that the father had been bed-ridden for three years and was never likely to sit in Court again. The Court gave the oath to the son upon those conditions. The son died shortly afterwards; and never sat in Court himself. The following are the proceedings in the case.

*The same were read as follows.*

Le 10 May, 1628.

La Cour s'estant, Mercredy dernier, 7e du présent mois, assemblée en corps et transportée au domicile de Monsr. Nathanael Darel, Esqr. Lieut. Governeur, l'ayant adverti de la nécessité d'admettre des Justiciers au siége pour fournir les places vacantes: Il auroit ésté appointé d'être ce jour d'hui procédé à l'eslection des dits Sieurs Jurés, mandement ayant été envoyé aux Connétables et Douzeniers des paroisses des comparoir ce jour d'huy en Cour pour y estre procédé suivant l'ordre de Messrs. les Commissaires Royaulx, confirmé par les très honorables Seigneurs du Conseil Privé de Sa Majte.: La dite Cour à ceste fin assemblée, et, les dits Connestables et Douzeniers venus exprès, s'est présenté l'avant dit Sr. Lieut. Gouverneur, lequel a déclaré qu', avant que procéder plus oultre, il se fist admission de loy de ceulx qui avoient eu la pluralité des voix en la dernière élection. Et la Cour, considérant qu'en icelle eslection la dite pluralité estoit tombée sur le Pierre Careye, Junr., dequel le père, Monsr. Pierre Careye Senr., Justicier, est encore vivant, et que par la coûtume de Normandie, conforme à l'ancienne pratique du pais, le père et le fils ne peuvent exercer pareilles charges en mesme jurisdiction, a esté d'advis que le dit Careye ne pouvoit estre admis en icelle charge, et qu'elle debvoit passer à une nouvelle eslection. A quoy le dit Sr. Lieutenant s'étant formellement et publiquement opposé, jusqu'à en appeler les officiers du Roy et l'audience a tesmoing, la dite Cour, en esgard tant au bien du service de Sa Majte. qu'au repos public, a suppercédé de passer oultre à la dite eslection jusqu'à en avoir eu redresse de Sa Majte. et des susdits très honorable Seigneurs de son Conseil privé.

Le 23 May, 1629.

Sur l'eslection par cy-devant faite de la personne de Mr. Pierre Careye, Junr., fils de Mr. Pierrre Careye, Senr., à la charge et office de Justicier, la Cour ayant différé de l'admettre en la dite charge, à raison que, son dit père estant a présent le premier Justicier du Siege, le dit Sr. Careye, le fils, par la coûtume de Normandie et practicque ancienne du pais n'y pouvoit être admis, durant la vie de son dit père, toutefois ayant sur ce conféré avec Monseignr. le Gouverneur, touchant la dite difficulté, et considéré que le dit Sr. Careye le père est à présent (à cause de son vieil aage) tellement alicté qu'il n'y a apparence aulcune qu'il puisse jamais être cappable d'exercer sa dite charge, auroit esté finallement conclud que le dit Sr. Careye, Junr, seroit admis et sermenté en la dite charge de Justicier, pourveu toutefois que les dits Srs. Careye père et fils, au cas que son dit père seroit par cy-apprès cappable de l'exercise de la dite charge, ne pourront s'assoir ensemble au siège de judicature; mais lors que le père y seroit assis le fils ne s'y pourroit assoir; n'y ne pourront passer et signer ensemblemt. eux deux seuls aulcuns contracts ou marchés obligatoires. Et à ces conditions a présentement esté le dit Sr. Careye, le fils, reçu et sermenté à la dite charge et office de Justicier en ceste dite Cour et Isle de Guernezey, comme à telle charge appartient, après y avoir esté esleu et admis comme dit est.

5689. Mr. *MacCulloch.* The Order in Council applies principally to cases of appeal, in which there must be seven Jurats present. Of course that would apply to criminal cases equally.

5690. May a prisoner on his trial object to a Jurat on the ground of his having a prejudice against him, or having expressed an opinion upon his case?—I have never known that objection taken in criminal cases.

5691. Is it allowed in civil cases?

The *Contrôle.* I recollect one case in which it was raised. That was the case of the late Bailiff, Mr. Brock, who was said to have written some letter about Mr. Le Cotillier. Mr. Le Cotillier had some case coming on immediately after; and he recused the Bailiff: and the Court disallowed the récusation, which made a strong impression at the time.

5692. Mr. *MacCulloch.* In strictness, I think the récusation should be made in writing; and, if the party fails in establishing it, he is condemned generally to a fine of ten livres. I have often known that insisted on.

5693. Mr. *Jeremie.* I can mention a case in which a party was not recused, but he recused himself.

5694. There is a great deal of old law in the Coustumier, is not there, with regard to the challenge of witnesses? Would the law there apply to the challenge of Jurats as well?—It is difficult to say; but, I think, in practice, everything which would be held to apply to witnesses would be held to apply to Jurats.

5695. Mr. *De Courcy.* I recused the Bailiff and two Jurats in a criminal case; and it was overruled.

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5696. What did you recuse them for?—Their being parties themselves.

5697. They could not well be parties to a criminal proceeding, could they?—It was for advising. They took a deep interest in my welfare at that period. I succeeded in preventing Bailiff Brock sitting in an action which I brought against himself.

5698. Rev. *Daniel Dobrée.* I beg leave to mention a case in which I recused no less than seven Judges, because they were blood relations of my opponents. I speak of the fellowship case. That was disallowed; and I was condemned. So anxious was my opponent, Mr. Carey, that counsel should not be heard on my side, that he retained my counsel, Mr. MacCulloch, at two hours' notice; and I had to plead my own cause. All the counsel were engaged.

5699. Mr. *De Havilland.* That was not a judicial proceeding, but a question of patronage on an election.

5700. (To Mr. *MacCulloch*). At what stage must an objection to a Jurat be taken?—In limine, as soon as the cause is read, and before any statement is made.

5701. Before the Cour du quartier, a person comes forward to make a complaint; what would be the case there?—He would be bound to state, "Before I make my complaint, I object to so and so." Supposing a charge to be brought in a police court, the constable says, "Here is such a man, I have a charge against him;" he must make his objection immediately.

5702. We understand the proposed alteration of the law as to the admission of relatives as witnesses has been discussed here a good deal?—Yes.

5703. Will the gentlemen present, who are members of the Bench and Bar, favour us with their opinion on the subject. (To Mr. *Retilley.*) What is your opinion upon it?—I think that to admit indiscriminately every one to give evidence would be productive of a great deal of feeling. We live here in a state of society very different from that of England: and, I think, if the law of evidence were extended to all relationships, it would be productive of great evil, inasmuch as, having their feelings of relationship brought in contact with people's sense of duty, it would give rise to a great deal of false swearing.

5704. Are you against enlarging the circle at all?—No. I think the Court has done it in certain cases. In the case of breach of promise of marriage for instance.

5705. Are you against enlarging it as far as the degree of brother; admitting cousins, but excluding brothers?—Yes; adopting the French laws.

5706. Mr. *Le Marchant.* I should not like to receive the evidence of a father against his children, or a brother against his sister. I think you might go as far as first cousins.

5707. Mr. *Métivier.* My feelings are very strong upon that subject. I should be very sorry to see the law of evidence extended so far as to oblige father and children, brother and sister, or even, in this country, uncles, to be witnesses against each other.

5708. When you say uncles should you add cousins?—No; I should have no objection to admit cousins; but I should not like to go beyond that. In this community, we often find that uncles stand in the place of parents.

5709. Mr. *De Havilland.* I am convinced, if you were to extend the limits beyond first cousins, not only would parties have their feelings a good deal hurt, but it would break peace among families. I think it would break that union which has hitherto prevailed.

5710. Mr. *MacCulloch* (Jurat). I think it might be extended to admit first cousins; but not beyond.

5711. Mr. *Jeremie.* I entirely agree in what has been stated by these gentlemen respecting extending the admission of evidence to father, son, brother, nephew and uncle. By our mode of proceeding in criminal cases, the utmost facility is already given to parties for arriving at the truth; and, if they cannot get at it without having recourse to those persons of so near an affinity, they leave the presumption against their own testimony.

5712. You would let one brother kill another, and the third brother see it, and not be able to give evidence of the fact?—At present we admit a brother against a brother, and not for him. I think they ought to be excluded in all cases.

5713. The *Bailiff.* You cannot compel him to give evidence for the Crown; but he is inadmissible to give evidence for the defence.

5714. The *Procureur.* In this Island, all relations are admitted in what are called causes de mariage. In criminal matters, I think it would be the greatest misfortune for this Island to oblige brother or sister to declare against each other.

5715. The *Contrôle.* I should wish the Court to be put in possession of whatever evidence there is. I think the objections taken by these gentlemen are not half so injurious as the contrary. I think it is better the Court should be put in possession of whatever evidence there is, and let them weigh it.

5716. You agree with Mr. MacCulloch?—Yes.

5717. The *Procureur.* With respect to trying several persons together, if we had no interrogatory, I think it might be done; but I see great difficulty in trying three or four persons together, and reading all their interrogatories, because those interrogatories would naturally have the effect of evidence.

5718. Mr. *MacCulloch.* They have the effect of evidence now. When the last man is tried, the interrogatories of the others have been already read: and they have made an impression upon the mind of the Court.

5719. The *Contrôle.* I believe there have been many cases in which acquittals have taken place, in which, if they had been all tried together, the accused would have been convicted.

5720. Mr. *Métivier.* Three soldiers were brought here accused of an assault. They gave in their interrogatories, and stated facts which were evidently incorrect; but that had no effect upon the minds of the Judges of the Court. We took the evidence as it came before us.

Adjourned.

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*Friday, 9th October,* 1846.

*John Le Marchant,* Esq., (Jurat), examined.

John Le Marchant, Esq., Jurat. October 9th, 1846.

5721. The Commissioners understand you wish to address some remark to them?—I wish to mention that, having been a partner in the bank, on no occasion have I judged in any case in which the bank was in any way interested: and, I believe, I may safely add that there is not a Jurat who ever judges in any case in which he is at all interested.

5722. (Mr. *Jeremie.*) I have never yet had occasion to challenge a Jurat. The fault in that respect is that they find their consciences moved much too soon. They challenge themselves.

5723. (*William Bryce.*) The fact is it has been considered a decided insult by the Court to challenge their opinions; and men, for fear of being marked men and called black sheep, have been afraid to do so.

5724. Can you say that you yourself have been afraid to take any steps of that sort?—Yes; I decidedly do.

5725. (The *Bailiff.*) Here are the proceedings (producing the same) to inquire by what authority the Court of Sark usurped to have a Bailiff and Jurats there.

The following documents were delivered in and read.

Acte de la Cour Royale de Guernsey.

Chefs Plaids, S$^{t}$. Michael, 1581, par Nicholas Carey, Juge délégué, présents, etc.

"Il est ordonné qu'il sera signifié à Hélier de Carteret, Fermier de l'Isle de Serk, par le prevôt de la Majesté, de comparôitre en cette Isle par devant Justice, pour cognoistre de quelle autorité Jurés Justiciers et autres officiers ont été établis en la dite Ile, et pour rendre raison d'autres fautes commises en la dite Ile, suivant la suite et demande du Procureur de la Majesté."

Le 28$^{e}$ Mai, 1582, devant Tho$^{s}$ Wigmore, Baillif, présents, etc.

"S'est présenté le Procureur de la Majesté, lequel nous a remontré qu'en l'Ile de Serk, laquelle est parcelle et membre de cette Ile de Guernsey, on auroit érigé et établi une jurisdiction d'un Baillif et de douze Jurés et autres officiers en icelle, et qu'il n'est loisible à aucun sujet, sans l'autorité du Prince, d'ériger ou établir aucune telle jurisdiction, et partant nous a requis sur ce d'y pourvoir et donner ordre: Sur quoi a été ordonné, par Justice, que Mons$^{r}$ le Bailif de cette Ile et quatre de la Justice se transporteroient en la dite Ile de Serk ensemble, et les officiers de la Majesté, pour faire inquisition des prémisses."

Le 31$^{e}$ jour du moye de May, l'an 1582, par devant Thomas Wygmore, Baillif: présents: à ce, Nicollas Carey, André Henry, Thomas Le Marchand, et Jean Andros, Jurés—Lessquels s'estoyent transportez en l'Ile de Serk pour faire inquisition suivant la remonstrance du Procureur de Sa Majesté; ont comparu les habitants de la dite Isle de Serk, lesquels, après leurs Serments estants enquis et examinez, et ayant produit le livre qu'ils gardoyent, a été trouvé qu'en la dite Isle de Serk un, nomé Edouard De Cartheret, estoyt Baillif, et onze autres des habitants estoyent Jurés (le douzième estant puis naguèrres décédé). Item y avoit autres officiers, come Sergeant de l'espée, un Sergent ordinaire, un Procureur, tant pour la Majesté que pour Phl. De Cartheret, un Centenier, un Connétable et deux Vingteniers, et autres, lesquels avoyent esté choisis et posez aux dites offices par Phles. De Cartheret, du consent d' Hellier De Cartheret son père, l'an 1579, le 27$^{e}$ jour du moye d'Octobre, et qu'ils usoyent des lois et coûtumes de l'Ile de Gerzey, et des poys et mesures d'icelle, et mesme que, s'il advenoyt aucune cause d'importance entr' eux, qu' ils auroyent sur ce l' advis et conseil des Jurés et autres gens ssavants de l'Isle de Gerzey, et aussi que les amendes de la dite Court, combien qu'elles fussent adjugées à la Majesté de la Royne, estoyent appliquées au profit du dit Phle. De Cartheret.

"Sur quoy a esté ordonné que le dit Edouard De Cartheret, et deux de ceux qui estoyent establis pour Jurés, viendroyent présentement par devant la Justice de l'Isle de Guernezey, répondre au procès du Procureur de sa Majesté, et rendre raison de quelle autorité ils avoyent érigé icelle jurisdiction, rejettant la Court Royalle de la dite Majesté en l'Isle de Guernezey, et s'attribuer l'autorité d'icelle, et en partie la transporter et différer en l'Isle de Gersey."

6726. Mr. *Mac Culloch* (Advocate). In consequence of that proceeding, two of the five self-elected Jurats were imprisoned: and then, afterwards, the Court was regularly constituted. Then, in the reign of Charles the Second, the Jurats were done away, and the Seneschal substituted. I have here several documents relating to Sark, which I will hand to the Commissioners.

Le 2$^{e}$ Juin, 1582; devant Thomas Wigmore, Baillif: Présents, etc.

"A comparu Edouard de Carteret et deux de ceux qui lui assistoient en l'Ile de Serk, comme Jurés: auxquels à été proposé par le Procureur de la Majesté qu' ils eussent à enseigner de l' autorité par vertu dont ils auroient été établis et posés à leurs offices; et, en ne montrant valable autorité, qu'il plût à Mons$^{r}$ le Baillif et la Justice les faire constituer prisonniers, comme usurpateurs de l'autorité Royalle de la Majesté, et contemneurs de la Cour et jurisdiction de Sa Majesté en cette Ile établie et approuvée, dont icelle Ile de Serk est dépendante. Et, partant, a été ordonné par Justice, après que le dit Edouard de Carteret n'a sceu montrer aucune autorité valable, et que le dit Carteret et ses associés ont usurpe l'office de Baillif et Jurés, que le dit Edouard Carteret sera constitué prisonnier, comme usurpateur d'une office et charge publique en la dite Ile de Serk, étant dépendante du Gouvernement et jurisdiction de cette Ile de Guernsey, comme peut apparoître par les gracieuses Lettres Patentes de la Majesté de la Reine, nôtre Souveraine Dame, du premier et deuxième an de son noble Regne, et par les Lettres Patentes de ses nobles Progeniteurs concernant les privilèges de cette Ile, et même par les Lettres Patentes des Capitaines et Gouvernours de cette Ile de Guernesey, qui ont été de tems en tems, dont mémoire d'homme n'existe du contraire. Et, quant au deux, qui lui assistoient comme Jurés, en considération que la dite Ile de Serk est bien peu peuplée, leur avons permis retourner à leurs maisons, leur étant deffendu d'exercer aucune office de Baillif et Jurés en la dite Ile, jusqu' à autre ordre ait été pris sur la dite affaire."

"A tous ceux qui ses présentes Lettres verront ou orront, Thomas Wigmore, Baillif, en l'Ile de Guernsey, de nôtre Souveraine Dame, Elizabeth, par la Grâce de Dieu, Reine d'Angleterre, France

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et Ireland, Défenseure de la foi, etc., Salut en Dieu. Sçavoir faisons que par-devant nous, en la Ville de Saint Pierre Port, en la dte Ile, le 18e Juin, l'an de grâce, 1582, et en présence de Jean Blondel, Nicolas de Sausmarez, Nicolas Le Mesurier, Nicolas Carey, Jean de la Cour, Guillme Beauvoir, Thomas Blondel, Edward le Febvre, Andrè Henry, Thos Marchand, et Jean Andros, Jurés de la Cour Royale en la dite Ile, sur le propos et déclaration du Procureur de la Majesté de la Reine: lequel nous a demontré, comme Ph. de Carteret, de la succession et eschaette d'Hélier de Carteret, son père, défunt, lequel, en son vivant, auroit obtenu de Sa Majesté l'Ile de Serk, parcelle et membre de cette Ile de Guernesey, en payant une certaine rente annuelle à la recette de Sa Majesté, en cette dite Ile, avec les services et droits seigneuriaux, est par conséquent tenu d'en faire et rendre foi et homage, aussi que le dit Procureur dit et prétend être contenu ès Lettres Patentes de Sa Majesté que le dit de Carteret porte touchant les prémisses; et d'autant que n'a encore fait ni offert de faire homage, ni payer les droits, qui de droit, à cause de ce, sont dus au Gouverneur de Sa Majesté en cette Ile de Guernesey, de laquelle la dite Ile de Serk est dépendante. Pour préserver et garder le droit et prérogtif Royale de sa Majesté, le dit Procureur nous a requis et démandé possession et saisine de la dite Ile, pour n'avoir accomplis les choses susdites, laquelle lui a été concedée et accordée de Justice, suivant les loix et coûtumes sur ce usitées en cette dite Ile, entendu que le dit Ph. de Carteret sera oui, en toutes ses justes oppositions, réponses, et défenses, si aucunes en avoit, lesquelles il pourroit ci-après alléguer à l'encontre du dit Procureur; et en cas que le dit de Carteret ne seroit tenu et sujet quant aux choses sudites, adonc la dite saisine sera de nullité, ni de force ou vertu en manière quelconque.

"Item, Le 19e du dit mois et an, par-devant le dit Baillif, et en présence de Nics Carey et Andrè Henry Jurés de la dite Cour Royale, en la dite Ile, fut présent Jean de Sausmarez, comme Prevôt de la Majesté de la Reine, en l'Ile de Guernesey, et autres à icelle adjacentes, lequel notifia avoir baillé et délivré, par vertu de son office, possession et saisine aux officiers de sa Majesté, sçavoir est de la dite Ile de Serk et ses appartenances, et des fruits, rentes, et revenus quelconques, qui, en icelle, pourroient appartenir à Ph. de Carteret, en toute la dite Ile de Serk: et est accordant à l'Acte de Justice sus-écrite."

5728. "Le 21e Juillet, 1582; par devant Thomas Wigmore, Bailif: présents, &c.

A la requête et supplication d'Edouard de Carteret, lequel étoit constitué prisonnier au chateau Cornet, comme apparoit par les procédures sur ce passées, a été le dit de Carteret admis à sortir de prison sur pleiges, lesquels il a présentement amenés en Justice, à sçavoir, Jean de la Marche, fils Jean, et Cardin Fantrart, lesquels se sont obligés en Justice aux officiers de Sa Majesté, corps pour corps, et biens pour biens, pour le dit Edouard de Carteret, de le rendre en Justice toutes fois et quantes, dans quinze jours après qu'ils en seront avertis par les officiers, pour répondre en la cause pour la quelle il avoit été commis en prison."

5729. "Ordres, Loix et Usages appointez et commandez aux habitans de l'Ile de Serk par authorité Royale, comme ensuit, et ci établies, le 24e jour du mois d'Avril, 1583, pour icelles inviolablement observer."

"In the matters of controversy, depending between Sir Thomas Leighton, knight, Captain of the Isle of Guernsey, aud Philip de Carteret, Esq., Seigneur of St. Ouen, concerning certain demands made by the said Sir Thomas, on the behalf of the Queen's Majesty, by virtue of his Letters Patent, whereby he claimed martial jurisdiction within the island of Serq, prémière saisine to be paid to her Majesty by the said Philip de Carteret for the said Isle; and concerning other demands of jurisdiction made by the Bailly and Jurats of Guernsey; that it pleased the Lords of the Council to commit the matters in controversy, to her Majesty's Attorney and Solicitor-General, Mr. Serjeant Fleetwood, Mr. Doctor Hamon, and Mr. Thomas Norton, to be by them examined and considered at large, they jointly to certify their opinions in law of the right of the parties severally pretended: Whereupon they returned to their Lordships their opinions in writing, contained in the eighteen following articles; who, after a deliberate consideration had thereof, did allow and ratify the same, and commanded the said articles to be set down, and entered in the Register of Council, as their express order and final determination upon the said matter in controversy, as followeth, viz.:—

"*Article 1st.* For martial jurisdiction in Sarq, and matters of the office of Captain: We think it to appertain to the Captain in Guernsey, as in Alderney.

"*Article 2nd.* For the civil jurisdiction in Sarq: We think it convenient that there be five Jurats chosen by the inhabitants of Sarke, unless the people, increasing, shall require a greater number; then, by Her Majesty's Order, to be augmented to seven; and the eldest of the said Jurats to give sentence, as is used in Alderney.

"*Article 3rd.* These Jurats to hold Pleas and use jurisdiction in Sark, in all causes, as is used in Alderney; and appeals likewise to be from Sark to Guernsey, as to the superior Justice, in all causes as is used in Alderney.

"*Article 4th.* Item, a Clerk of the Court to keep record of all such matters as shall pass before them; and this Clerk to be always one of the inhabitants, and to be appointed by such authority in Sark as the like is appointed in Alderney, with consent of the Lord of Sark.

"*Article 5th.* Item, a Prevost that shall serve to plead the Queen's causes, as a Procureur; to arrest as a Prevost; to adjourn and distrain as a Serjeant; and to receive the amercements of the Court; and of such things as he shall receive due to the Queen to yield accompt to the receipt of Guernsey, as the like officer of Alderney doth. This officer to be always one of the Isle of Sark, and to be appointed by such authority in Sark as the like is appointed in Alderney.

"*Article 6th.* Item, a Conestable and a Vingtenier, inhabitants of Sark, to be chosen by the inhabitants of that Isle, and there to execute their office, in the like manner as the like officers in Alderney.

"*Article 7th.* For ecclesiastical causes: We think good not to meddle therein, but to refer that wholly to the Bishop of Winchester, to whose jurisdiction all those Isles are annexed.

"*Article 8th.* For Prémière Saisine: We think that the Seigneur of St. Ouen, Lord of Sark, ought, by his tenure expressed in his Letters Patent, to pay Prémière Saisine to her Majesty for the said Isle of Sark.

"*Article 9th.* Item, that he is not bound by his tenure to serve to the Court of Cheefe Pleas at Guernsey.

"*Article 10th.* Item, for wracks of the sea: We think that it apprateneth to the Lord of Sark, by express words in his Letters Patent.

"*Article 11th.* Item, that Tertia decima, Venditiones Terrarum, apperteneth also to him by his Letters Patent, as also the profit called Firmage.

"*Article 12th.* Item, touching Conger houze, called among them, 'Esperquerie des Congres:' We think

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it not convenient to direct such of new, to the burthen of the subjects in Sark, where none of long time hath been, nor to drive the fishermen to bring their fish to the Queen's house in Guernsey, to the discouragement of the people newly drawn there to inhabit that Isle. But, if any such Esperquerie shall be hereafter thought good to be used in Sark, we think it a prerogative belonging and reserved to the Queen, but yet so precisely to be used as is expressed in the Book of Extent.

" *Article* 13*th.* For Customs of Wares, and for Ancrage: We think the same to belong to the Queen, and to be levied by the Queen's officers to her Majesty's use.

" *Article* 14*th.* For weights and measures: We think it meet to be referred to the present usage of that Isle of Sark, especially the measures of grains; because, in such manner, their rents of corn are received and paid, and after that form the people be already settled, according to the measure of Jersey; but, the oversight thereof and delivery of standart agreeing with the present measures, We think not meet to refer to any authority in Jersey, but to Guernsey, as in Alderney.

" *Article* 15*th.* Item: that, in Sark, the inhabitants shall observe the ancient laws and customs confirmed, to be established by her Majesty, as in Alderney.

" *Article* 16*th.* Item: touching Ordinances, or by-laws to be made for matters within the Island of Sark: We think it convenient to refer to the Lord and the inhabitants of Sark, from time to time, as they shall see necessary for the welfare of that Isle, until your L. L. upon especial complaint shall see cause to take other order.

" *Article* 17*th.* Touching transportation of grain: because the Island standeth in manner wholy upon tillage, which is to be encouraged, and Guernsey standeth otherwise, both of merchandize, fishing, and artificers, We think it not convenient that the inhabitants of Sark be restrained to the Ordinances of Guernsey, but to their own by-laws, and to the immediate permission or restraint of Her Majesty or Her Council, provided that Sark be not suffered to transport without keeping a convenient quantity, to be limited by your L. L., always in store for victualling the Queen's subjects in the Isle.

" *Article* 18*th.* For the matters of default, suggested to be committed by the Seigneur of St. Owen against his Patent: because they be matters in fact, they cannot so well be examined by us; but we think meet to be referred to some indifferent Commissioners in those parts.

" And, whereas Philip de Carteret, upon the return of the Commissioners' opinions, did exhibit certain petitions containing in effect the matters following, viz.:

" *Pet.* 1*st.*—First, that, because the Isle of Sark was parcell of Her Majesty's Dutchy of Normandy, and governed by the ancient laws of that country, whereby no Première Saisine is due, therefore besought their L. L. to discharge him of the payment of the said Première Saisine.

" *Pet.* 2*nd.*—Secondly, that he might have the government of the people of the Isle of Sark, and the keeping of the artillerie and ammunition there, for the consideration therein specified.

" *Pet.* 3*rd.*—Thirdly, that there might be a Seal authentical granted by Her Majesty within the said Isle, to serve in causes of common justice arising within the same between partie and partie.

" *Pet.* 4*th.*—Fourthly, that the L. L. rent, due to Her Majesty for the said Isle of Sark, might be at all times received at Guernsey, when it should be sent thither without delays to be used by the Receiver there; whereby the suppliant was often put to unnecessary charges, attending for the paying thereof.

" *Pet.* 5*th.*—Lastly, that the inhabitants of the Isle might be suffered to trade and to traffic abroad out of the Isle, as others of Her Majesty's subjects in the rest of the Isles, without empechement or prejudice to your suppliant.

" The consideration of which petitions were, by the L. L. of the Council, committed to the Earl of Leicester and Mr. Secretary Walsingham; and they, upon view of the said petitions, calling the parties before them, did, by authority of the Council, in every of the said petitions, take order as followeth, viz.:—

" *Rep.* 1*st.*—First, they ordered that the opinion of the Commissioners in the 8th Article concerning Première Saisine should stand, but did mitigate the sum due for the said Première Saisine, reducing the same to Forty Pounds sterling, to be paid at the receit of Guernsey, between the Feast of St Michael the Archangel and All Saints ensuing.

" *Rep.* 2*nd.*—The matters contained in the 2nd, 4th, and 5th petitions were referred to the discretion of the Captain.

" *Rep.* 3*rd.*—And the matter of the third petition was denied, as not expedient to be granted.

" Moreover, whereas, in the last Article of the opinions of the Commissioners certified, the default suggested to have been committed by Ph. de Carteret, in not producing the inhabitants to the musters at the time required by the Captain, were thought meet to be referred to some indifferent Commissioners to be examined, being matters *de facto;* it was, by the said Earl of Leicester and Mr. Secretary, for the difficulties appearing unto them in the choice of indifferent Commissioners to examine the defaults, thought more expedient that the said Philip de Carteret should acknowledge the said defaults, and the Captain remit them unto him, which was accordingly done in the presence of the said Earl and Mr. Secretary."

5730. " Thomas Leighton, Chevalier Captaine Gouverneur Général pour la Majesté de la Reine d'Angleterre, Souveraine de ces Isles de Guernesey, Auregny, Serq, Erm, &c., Nicolas Martin, Lieutenant de Louis Devic, Baillif de la dite Majesté en la dite Isle de Guernesey, Guillaume Beauvoir, Pierre Careye, W^m^. Le Marchant, et Nicolas Martin, fils Nicolas, Jurez; Jean Devic Procureur, Edmond Effart, Prevôt, et James Olivier, Clerk de la Court de Sa Majesté, en la dite Isle de Guernesey: A Tous Ceux à qui ces présentes Lettres parviendront, Salut. Sur ce qu'il a plus à Messeigneurs du très honorable Conseil Privé de Sa Majesté ordonner qu'en l'Isle de Sark, étant membre et relevant de la jurisdiction de la dite Isle de Guernesey, et à laquelle a été annexée temps dont mémoire n'existe du contraire, y auroit une jurisdiction et officiers établis pour l'administration de la justice et police de la dite Isle, comme est porté par l'ordre sur ce fait à Greenwich le 24^e^ Jour d'Avril, 1583; Nous, pour cet effet, étant assemblez en la dite Isle de Serk, avons posé et établi Cour, jurisdiction et officiers en la dite Isle, lesquels officiers ont été jurez et sermentez à leurs dits offices, ainsi qu'à tels cas appartient, étant choisis et approuvez par la généralité des inhabitants de la ditte Isle de Sark.

PREMIER.

Robert Sloley,
Huge de Carteret,
Jean de Carteret,
Thomas Roo,
Lucas Le Masurier,

Ont été sermentez à la charge et office de Jurez et Justiciers de la dite Cour en la dite Isle de Serk, entre lesquels le dit Robert Sloley a été ordonné pour présider comme Juge, ayant été élu le premier Juré, et, en son absence, le second après lui.

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"Ils ont été choisis, suivant comme dessus, et sermentez après que les dits habitants en avoient fait élexion, et ce par le consentement du dit S^r.Gouverneur ; Sçavoir, viz. :—

BEN. POINGDEXTRE, *Clerk de la Cour.*
NOËL VAUDIN, *Prevost ou Sergeant.*
COLLAS CRISTIN, *Connestable.*
JEAN NEWEL, *Vingtennier.*

Du devoir des Jurez et Officiers de la Cour, en la fonction de leurs charges severalles, et des droits appertenant à leurs offices.

PREMIER.

"D'autant que la dite Isle de Serk a été longue espace de tems sans habitation et la mémoire perdue des coûtumes et anciens usages observés pour la police de la dite Ile, est ordonné que les dits Jurez et Officiers conviendront et s'assembleront trois fois l'an, viron le prochain Mercredi après le xxix^me Jour de Septembre, le prochain Mercredi après le xv^me Jour de Janvier, et le prochain Mercredi après le jour de Pasques, pour tenir leurs Chefs Plaids, et qu'à chacun des dits Plaids, les dits Jurez et officiers, par le consent du Seigneur de la dite Isle et de la généralité des habitants, feront telles Ordonnances qu'ils trouveront expédient et nécessaires de tems en tems pour le réglement de la police de la dite Isle.

"En administration de justice useront les dits Jurez des loix et coûtumes approuvez et établies d'authorité de Sa Majesté en la dite Isle de Guernesey, tant conformes aux loix et coûtumes de Normandie, et aux coûtumes localles de la dite Isle de Guernesey approuvez, différentes de la coûtume de Normandie.

"Jugeront les susdits Jurez de toutes causes civiles, tant en cause de meuble que d'héritage, et de toutes matières et actions de Forfaite, Excez, et Injures, par emprisonnements, ou amendes n'excédant la somme de soixante sols et un denier Tournois, pourvu qu'il n'y ait matière de crimes, auxquels cas les dits Jurez seront tenus envoyer, par le Prevôt de la dite Ile, leurs corps avec la cause, à la Justice de Sa Majesté en la dite Isle de Guernesey, pour y procéder, comme sera expédient. Et de ce qui sera fait et passé devant eux en garderont et donneront fidelles records.

"De toutes sentences et jugements des dits Jurez excédant la valeur de dix livres Tournois en meuble et de toute cause en héritage sera libre à un chacun d'en appeller à la Cour Royale de Guernesey.

"De ous marchez et contracts en héritage, qui seront faits et passez par-devant les dits Jurez, les minutes, signez du signe des dits Jurez, seront reçues et approuvez, pour être authentiques, sous le sceau de la Baillye de la dite Isle de Guernesey toutes fois et quantes que les parties le requeront. Et prendront les dits Jurez pour leur devoir, Sçavoir.

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| Pour chacun enrollem^t de Marchè de bourse . . . . . | Un Gros Ster^s. |
| Pour chaque retraitte en héritage . . . . . | Un Gros Do. |
| Pour Signe de chaque Jurè . . . . . | deux den. Do. |
| Pour le veude de chaque Cause Arrêts . . . . . | vi deniers Ster^s. |
| Pour chaque Remède de Justice . . . . . | vi Do. Do. |
| Pour chaque Arrest ottroyé . . . . . | Un Gros Do. |
| Pour chaque Appel fait de leur Sentence . . . . . | Trois Gros Do. |

Pour taxer et faire un extrait des amendes, qui est accoûtumè une fois en trois ans, le disner est du aux Jurez.

"Item : pour chaque Veue de Justice les dits Jurez prendront, chacun, Six deniers Sterlin, et chacun officier de la Cour iiii deniers Sterlin.

"Le Clerk de la Cour fera regître, et gardera fidelle et loyal record de toutes causes qui passeront devant Justice, et pour ses devoirs prendra le tiers des menues amendes, viz. de cinq sols Tournois et au dessous, et des deffautes, toute fois et quand ils seront recueillies. Et prendra un denier et maille sterlin pour chacun extrait des rolles signé de son signe, et pour autre extrait vij deniers Tournois.

"Le Prevost servira de plaider les causes de le Reine comme Procureur ; de faire arrêt sur le corps et biens, meubles et immeubles, des personnes, comme Prevost, et faire toute sorte d'ajournements et destraintes comme un Sergeant, et de recevoir et receuiller les amendes et quisitions de la Cour, coûtumes et ancrages et autres choses deues à Sa Majesté ; et en tiendra compte à la Recepte de Sa Majesté en la dite Isle de Guernsey.

"Et prendra le dit Prevôt, viz^t.

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|---|---|
| Pour chaque arrest . . . . . | un gros sterlin^s. |
| Pour chaque ajournement . . . . . | un denier do. |
| Pour chaque relation qu'il fera de son office . . . . . | un gros do. |
| Pour chaque saisir qu'il baillera . . . . . | trois gros do. |

Pour recueillir les amendes prendra le tiers des deffauts et menues amendes, savoir de cinq sous Tournois et au dessous.

"Lesquelles Ordonnances devant dites l'avant dit Baillif et le reste des Justiciers de la dite Isle de Guernesey ont approuvés."

5731. "Ordonnance de la Cour Royale de Guernsey pour l'établissement d'une Prison en l'Isle de Sark.

"Le deuxième jour du mois de Novembre, l'an mille cinq-cents nonante-sept, par-devant Louis De Vic, Baillif : présents à ce Nicolas Martin, Senior, Guillaume Beauvoir, Andrè Henry, Jean Andros, Jean Sausmarez, Pierre Beauvoir, Pierre Careye, Nicolas Martin, Jun^r. et George Guille, Jurès ; et en présence de Messire Thomas Leighton, Gouverneur.

"Sur ce que par cy-devant, il nous a été remontré, de la part des officiers soubs Sa Majesté en l'Isle de Sark, que d'autant qu'en l'établissement qu'avons fait (suivant les Ordres en ce posés par mes Seigneurs du Privé Conseil) de la Jurisdiction Royale en la dite Isle, il n'y auroit pour lors été pourvu d'aucune ordre exprès concernant la seure garde et détension de telles Psonnes, qui, pour aucune cause civile au criminelle, auroient encouru et mérité punition d'emprisonnement corporel, en défaut de quoi plusieurs inconvénients seroient advenus, et de plus en plus s'y pourroient accroître, au préjudice du service de Sa Majesté, détriment publicq, et mépris intollérable de Justice, de laquelle toute Administration et exécution seroit entièrement rendue vaine et frustratoire, s'il n'y étoit convenablement pourvu : pour ces cause et raisons très importantes et nécessaires, et après meure et deue considération sur ce prinze : Avons (en l'authorité de nos dites charges soubs laquelle la dite

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Jurisdiction d'icelle est dépendante) finallement pourveu, pozè et establi Ordre exprès, ainsi qu'elle ensuiet.

" Premièrement, qu'au plus brief que faire se pourra, un certain lieu cloz, ou maison de capacité et force suffisante pour une Prison, sera à ceste fin appointée, ou (s'y besoin est) nouvellement bastie, en la dite Isle de Sercq, aux communs fraix d'icelle Isle, au lieu le plus propre et commode, principallement pour la plus sure garde des sus dits prisonniers, par l'advis de Mr. Amyce de Carteret, Escuier, pour le présent ayant la garde de la d^te^ Isle, et Lieutenant général en Icelle, soubs moi, avant dit Gouverneur des d^tes^ Isles, soubs Sa Majesté, et avec le consentement de la Justice du dit lieu.

" Item : Que le dit de Carteret sera tenu, à raison de sa dite charge, selon que de mesme il appartiendra, et sera pareillement pratiqué à l'advenir à l'endroit de tous autres qui aussi tiendront en icelle Isle la principalle place soubs Sa Majesté, selon que la raison, coustume et nécessitè de la chose l'importe : Notoirement en tel cas de pouvoir eslire, pozer, continuer et entretenir ung suffisant officier, lequel par le mesme nom et tiltre qu'icy est accoustumé, à sçavoir de Portier en la dite Isle, y aura la garde d'icelle prison et des dits prisonniers sur la mesme charge et peine que de droit il est porté par les loix et la coustume de cette dite Isle.

" Finallement : Que le dit Officier (ayant esgard à l'importance sus-dite de sa dite charge, laquelle y est d'aultant plus pénible et dangereuse qu'ailleurs, à cause que icelle Isle est présentement destituée d'une forteresse particulière, aura et recevra de chacun prisonnier qui lui sera amené par le Prevôt de la dite Isle, ou en quelqu'autre façon juridiquement commis en charge, tout, tel et le mesme salaire et émollument qu'en tel cas est de présent, ou qui, de temps en autre, sera, légitimement usité et pratiqué en cette dite Isle de Guernesey ; Excepté tout seulement que, pour entrée et pour issue de la prison, il recevra la moitié moins que ne fait le Portier de cette dite Isle.

" Et, afin de pourvoir promptement à la nécessaire exécution des prémisses, nous avons requis l'avant dit Sieur de Carteret, estant pour le présent employé en cette dite Isle au service de Sa Majesté, que, des son prochain retour en sa dite charge, il ait à notifier publicquement ceste présent ordre et faire pourvoir à l'entier effectuem^t^ d'icelle, au plus brief qu'il sera possible."

5732. " Sachent tous que, le douzième jour du Mois d'Aoust, mille six-cents soixante-un, devant M. Jean de Quetteville, Lieutenant d'Amice Andros, Eciuyer, Bailly de l'Isle de Guernesey, sous notre Souverain Sire, Charles deuxième, par la grâce de Dieu Roy d'Angleterre, Ecosse, France, et Irlande, Défenseur de la Foy, etc., et en présence de Messrs. Jean Bréhault, Pierre Carey, James Le Marchant, Guillaume de Beauvoir, Sr. Du Houmet, Jean de Sausmarez, Daniel de Beauvoir, Sr. Du Manoir, Elizée de Sausmarez, et Jean Blondel, Jurez de la Cour Royale en la dite Isle :

" Sur ce que Messire Philipe de Carteret, de l'Isle de Jersey, Seigneur de St. Ouen, etc., Bailly de la dite Isle, et Gentilhomme de la Chambre du Roy, a, ce jour d'hui, proposé à cette Cour que deux certaines Patentes Royales, ottroyées à ses ancestres, touchant l'Isle de Serck, fussent lues en icelle Cour, pour leur communiquer une clause mentionée ès dites Patentes, comme il auroit pleu à la Couronne ottroyer, entre autres choses, à ses dites prédécesseurs que tous contracts d'héritage concernant la dite Isle fussent passès sous le sceau du dit Seigneur de St. Ouen, et que tels passements seroient aussi bons et valables en droit, comme sont contracts passés sous les sceaux des Isles de Guernesey et Jersey : Cette Cour, condescendant à la proposition du dit Seigneur, a fait lire les Chartes sus-dits en pleine audiènce, et, oui sur ce le Procureur de Sa Majesté, à déclaré son opinion estre que le dit Seigneur de St. Ouen poura et peut mettre en exécution les clauses sus-dites des dites Patentes, et que tous tels contrats qui seront passés sous son sceau, suivant la teneur des dites clauses, seront receus en cette Cour comme sont contrats passés sous les sceaux des dites Isles de Guernesey et Jersey ; et que le dit Seigneur pourra aussi mettre sous son dit sceau les contrats d'héritage, qui ont été passés autrement concernant la dite Isle durant les derniers troubles.

" Extrait des Registres.—Es tesmoignage desquelles choses le sceau du Baillage de la dite Isle de Guernesey à ces présentes Lettres est mis et appendu, par nous soussignés, Bailly et Jurés, ce sept jour de Febv^r^, l'an mil sept-cents vingt et huict—Josuè Le Marchant, Baillif. Thomas Ffiott. Je. Andros."

5733. ACTE. " Le 15e jour de Juillet, 1675, devant Mr. Le Lieutenant Baillif : présents Messrs. Guillaume de Beauvoir et Jean de Sausmarez, Juréz.

" En rendant humble obéissance à certain Ordre de Sa Majesté, en date du XIX^e^ de Mai dernier, addressé à cette Cour, pour sermenter et établir un Séneschall en la Cour et jurisdiction de l'Isle de Serc pour administrer justice aux habitans de la dite Isle : A ces fins a comparu Messire Philippe de Carteret, Baronnet, Seigneur de St. Ouen, et de la dite Isle de Serc, etc., lequel a présenté Mr. Pierre Gibaut, pour estre Séneschall en la dite Isle de Serc, lequel Sr. Gibaut a été ensuite juré et sermenté à la dite place et charge de Séneschall, pour exercer avec même pouvoir et authorité de jurisdiction que les naguères Juges et Juréz de la dite Isle ont eu : lequel Séneschall jouira et percevra les mêmes droits, avantages, profits et émoluments, authorité et dignité que les dits naguères Juges et Juréz de la dite jurisdiction de Serc ont joui et possédé, et qui de droit sont appartenants et dépendants de la dite charge.

" Conformement au susdit Ordre de Sa Majesté, le Sr. Pierre Dobrée à été juré et sermenté à la charge et Office de Prevost de la dite Cour et jurisdiction de Serc, ainsy qu'à telle office appartient, et y ayant été présenté par le susdit Messire Philippe de Carteret, Baronet, Seigneur de la dite Isle."

5734. " Le cinquième Mai, mil huit-cent vingt-sept : devant Daniel de Lisle Brock, Ecuier, Baillif : présens Jean La Serre, Josias Le Marchant, Jean De Lisle, Jean Guille, Jean Le Messurier, Jean Hubert et Pierre Le Cocq, Ecuiers, Jurés.

" La Cour s'étant assemblée le 24e Mars, 1827, pour faire droit sur la requête de Jean Falle, Ecuier, Sénéchal de l'Ile de Serc, au sujet des Chefs Plaids, et de l'exécution des arrêts dans la dite Ile ; et après avoir entendu Pierre Le Pelley, Ecuier, Seigneur, le dit Monsieur Falle, et le Sieur Thomas Godfrey, Prevôt de Serc, ayant remis à un autre jour pour rédiger son Acte, a, ce jour, statué, ouie la conclusion des Officiers du Roi, ce qui suit, de l'acquiescement de toutes les parties.

" 1°. Que, pour prévenir les inconvéniens résultans de l'absence du Seigneur aux Chefs Plaids et de celle du Sénéchal en tous tems, le dit Seigneur nommera, tant un autorisé à le réprésenter en cas d'absence dans les Chefs Plaids de Serc, qu'un Député Sénéchal, qui sera sermenté pour représenter le dit Sénéchal, en cas d'absence aux Chefs Plaids, à la signature des arrêts et autres fonctions de la charge de Sénéchal.

" 2°. Que les Chefs Plaids de Serc se tiendront aux jours indiqués par l'Acte de la Cour Royale, du 16e Juillet, 1594, en présence du Seigneur ou de son autorisé, et du Sénéchal ou de son Député : et ne pourront les dits Chefs Plaids se tenir sans la présence du dit Seigneur et celle du dit Sénéchal, ou sans qu'ils y soient représentés comme dessus.

" 3°. Qu'aux dits Chefs Plaids, seules Assemblées Legislatives dans l'Ile de Serk, toutes les Ordonnances, suivant au 16e article de l'Ordre de Sa Majesté en Conseil, du 24e Avril, 1583, seront passées par le

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Seigneur et les habitans; le Sénéchal, ou son Député, y presideront, en vertu de leur charge, les Officiers de Justice et les habitans; et la narration sur les records de ce qu'y s'est passé commencera par dire que l'assemblée s'est tenue en présence du Seigneur, ou de son autorisé, et par devant le Sénéchal, ou son Député.

"4e. Lors qu'une Ordonnance sera proposée dans l'assemblée par quelqu'un qui y a droit de suffrage, elle y sera discutée, et ensuite mise aux voix des habitans, tenans, par le Sénéchal ou son Député. Si la majorité des voix est en faveur de la dite Ordonnance, le Sénéchal ou Député demandera le consentement du Seigneur, ou de son autorisé, à ce qu'elle passe et aye force de loi. Si ce consentement est donné, il ne pourra plus y avoir d'empêchement à ce qu'elle soit enregîstrée. Si ce consentement se refuse, l'enregîtrement ne pourra avoir lieu; sans préjudice, toutes fois, au droit de représentation des parties aux autorités supérieures.

"5e. Le Seigneur et le Sénéchal, ou leurs représentans, rédigeront avec le Greffier les Actes et Ordonnances passées en Chefs Plaids, que le Sénéchal, ou Député, ne pourra, sous aucun prétexte, refuser ou empêcher d'enregîtrer sur le livre des Records de Serk.

"6e. Quant aux arrêts: le Prevôt n' en exécutera aucun qui ne soit signé du Sénéchal, ou, dans son absence, du Député Sénéchal, à moins qu'ils ne soient l'un et l'autre absens de Serk: il sera alors loisible, sur le serment de la partie qui demande un arrêt, que le Sénéchal et Député Sénéchal sont absens de Serk, ou que l'arrêt et dirigé contre l'un ou l'autre qui y soit resté, au Baillif, Lieutenant Baillif ou Jurés de la Cour Royale, de signer l'arrêt, qui sera exécutoire en Serk de la même manière que s'il étoit signé du Sénéchal ou Député Sénéchal.

"7e. D'autant que les habitans et tenans de Serk n'ont pas été ouïs, et qu'ils peuvent avoir intérêt au présent Réglement, La Cour a ordonné qu', avant de l'enregîtrer, le Greffier de la Cour Royale le transmettra aux Connétables de la dite Ile, qui le mettront devant le dits habitans et tenans, afin de leur donner occasion d'être ouis, s'ils le souhaitent. Et sont le dits Connétables requis de faire savoir au dit Greffier, dans quinzaine après avoir reçu copie du dit Réglement, s'il y a quelqu'un qui demande à être oui devant la Cour Royale en opposition au dit Réglement."

5735. "Aux Chefs Plaids d'après Pâques, tenus le trente Avril, mil huit-cent trente-deux, devant Monsr le Baillif: présens Jean la Serre, etc., Jurés.

"Sur la représentation faite à la Cour par Monsr Elie Le Masurier, Sénéchal de l'Ile de Serk, que le bâtiment, qui d'ancienneté a servi de Prison dans la dite Ile, est dans un tel état de déterioration qu'on ne peut plus en faire usage pour cet objet, et priant la Cour de vouloir bien donner les ordres nécessaires afin qu'il y soit pourvu: La Cour, ayant précédement ordonné aux Connétable et Vingtenier de Serk de consulter les habitans de la dite Ile, et ayant remis à ce jour pour en ordonner définitivement, et après avoir entendu Pierre Le Pelley, Ecr., Seigneur de la dite Ile, et eu lecture d'une lettre du dit Sénéchal de la dite Ile, d'une lettre, en date du 2e Avril, 1832, signée du Sieur Henri de Carteret, Connétable, et du Sieur Henri Drilliot, Vingtenier de la dite Ile, d'une Ordonnance de cette Cour du 2e Novembre, 1597, des Ordres réglementaires pour la jurisdiction de l'Ile de Serk en date du 24e Avril, 1583: A ordonné et ordonne qu'un bâtiment convenable sera érigé dans un lieu sûr, dans six mois de ce jour et date, aux fraix des habitans de la dite Ile, au dire de Jean Guille, Ecuyer, Juré; lequel bâtiment servira de Prison à l'avenir en la dite Ile de Serk. Et, le dit Sénéchal ayant prié la Cour de déclarer le tems pendant lequel, d'après les susdits Ordres réglementaires, le dit Sénéchal a droit d'emprisonnier par voie de punition, a déclaré qu'aucun emprisonnement par voie de punition ne doit excéder trois fois vingt quatre heures; mais que, dans tous les cas qui seroient d'une gravité telle à requéri rau-delà de trois jours d'emprisonnement, le dit Sénéchal sera tenu d'envoyer les accusés par la première occasion à Guernsey, afin d'être produits devant la Cour Royale et qu'elle en ordonne. Et sera la présente Ordonnance transmise à Monsr le Sénéchal de l'Ile de Serk par le Greffier du Roi ou Député, pour qu'elle soit enregitrée et publiée en la dite Ile, afin que personne n' en prétende cause d'ignorance."

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*Charles De Jersey,* Esq., (Procureur de la Reine), examined:—

Charles De Jersey, Esq., Procureur de la Reine.

5736. It appears from the answers to question ten of the third series, that the evidence of an accomplice must be confirmed. What extent of confirmation is required?—The best answer I can give you is the answer of the Scotch Law. It may be confirmed by another witness speaking of other circumstances, or by circumstantial or presumptive evidence.

5737. The *Contrôle.* I know that, in a case in which I was counsel myself, the Court ruled that the testimony of an accomplice alone upon the material facts of the case was not sufficient to convict.

5738. Is it not the case, by your law, that the testimony of one witness is not sufficient to convict?—That has been very much modified of late years.

5739. The *Bailiff.* The following, from Alison's Criminal Law of Scotland, I think, expresses the idea as fully as anything I know. "Legal evidence, in murder, is founded either on the direct testimony of two witnesses, or of one witness with a train of circumstances, or of such a train of circumstances by themselves, as leave no reasonable doubt in the mind that the pannel was guilty."* I am not aware that, in point of law, there is any distinction between the two cases of an accomplice, as a single witness, and any other person. The only way in which the rule can operate in working is that, if one witness comes to the bar and swears directly, and there is no other evidence given, his testimony cannot convict.

5740. (To the *Bailiff.*) As a question of law: would the Judge say "Here the testimony of one witness it not sufficient?"—Yes. The rule is *Unus testis, nullus testis.*

5741. But you think a train of circumstances added to it would do?—Yes.

5742. The train of circumstances must be proved by some one else?—Yes.

5743. That means then that there must be another witness?— The *Contrôle.* In civil cases, I have seen it happen that, where there has been one witness, the Sergeant or somebody of the Court has been sworn to give some evidence as to his apprehension.

5744. Mr. *Carré.* That never amounts to proof.

5745. (To the *Bailiff.*) Is it quite correct that the train of circumstances must be proved by some other person?—It must be a train of facts confirming the evidence already given.

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* The Principles of the Criminal Law of Scotland, p. 73. Tit. MURDER, ss. 24.

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5746. The *Procureur*. These words in Bell's Dictionary, under the word "Evidence," I think, give an idea of our law better than any thing. "By the law of Scotland no fact can be legally proved, and in criminal cases no conviction can follow on theu nsupported testimony of a single witness, however unimpeachable his credit may be. But, where one witness swears distinctly to a fact, the want of a second witness to the same specific fact may be supplied by a witness to corroborative circumstances; and, in cases of circumstantial evidence only, two witnesses are not required to prove each circumstance of the same transaction." *

5747. May the same witness swear to the corroborative circumstances?—We consider that one witness is never sufficient.

5748. The *Bailiff*. Sometimes, the facts constituting the *corpus delicti* being proved by divers witnesses, and the identification of the party accused resting upon one witness, it is a matter of great discussion whether that is enough.

5749. (To the *Bailiff*.) You do not mean, to satisfy your consciences, but, to satisfy the rule of law?—Yes. I have heard the objection taken; but I do not think it prevails. In the way of dealing with cases here, the French law is very much followed, which looks at two classes of evidence, the one relating to the corps de délit and the other to the person.

5750. The *Contrôle*. In a case which Mr. Tupper pleaded, since the present Bailiff was appointed, there were a number of counts, and only one witness to several of them: the objection was taken there, and was overruled.

5751. Mr. *Carré*. I think that one witness is required to prove each circumstance.

5752. The *Procureur*. The circumstances must corroborate each other. You may take two facts: one person swears he saw a person commit a robbery; another swears that he was seen to sell the goods. There is a corroborating circumstance; and that would be quite sufficient.

5753. (To the *Bailiff*.) You think that the law is not different in the case of an accomplice and of any other witness?—I do not think the law is different, though there would, of course, be a discretion exercised by the Court.

5754. (To the *Procureur*.) You state, in your answer to the 14th question of the third series, that "the statements of the party charged, or his conversation with third persons 'en temps non suspect,' are admissible in evidence, either for or against him." What is the meaning of the expression "*temps non suspect*?"—Before the man is taken up or suspected. I should consider that temps non suspect.

5755. Is his interrogatoire temps non suspect?—No; that speaks for itself. I should take "temps non suspect" to be before he knows there is an accusation against him. I mean this, before he is taken up by the officer or knows that an officer is after him.

5756. The *Bailiff*. Before he knows he is suspected, I think, would be a much surer definition. The way in which the difficulty would be got over would be this. If, at the time the evidence was given, it appeared that there was any suspicion against the party at the time when the statement was made, it would not be received in evidence. But I will go one point further, and say that the counsel, on the other side, in order to support the objection to the reception of the evidence, might prove that there was a suspicion at the time, and afterwards argue that the statement had no weight because not made "en temps non suspect."

5757. (To the *Bailiff*.) Would not you have to determine, as an independent fact, the knowledge of the suspicion by the party?—I think not.

5758. (To the *Bailiff*.) To exclude the declaration of the party is of course a very easy rule; but to say that his statement cannot be evidence in his favour, unless made "in temps non suspect," appears to involve the necessity of trying in every case whether it was so or not?—Perhaps logically it would be so.

5759. (To the *Bailiff*.) How would it be practically got over?—I think the statement would be admitted; and, if the Court thought afterwards the time was one of suspicion, they would give no weight to it.

5760. That leaves this sort of opening, that the Court may give judgment with no evidence at all or next to none, or they may exclude evidence of the greatest consequence.

5761. (The *Bailiff*.) It leaves the matter very much to the discretion of the Court.

5762. The *Procureur*. As a general rule, there is a great deal left to the discretion or to l'arbitrement du Juge in criminal cases. We will suppose the case of a man's being killed. The man is thrown down a precipice. The person, who afterwards is charged with the murder at the moment the man falls, says: "What an accident has happened! Unfortunately I touched this man; and he fell over by accident and was killed." I should consider that temps non suspect; the first moment, before he knew there was an accusation or anything of the sort. But, if that man, after the falling of the person and the killing of him, said, "I hated the fellow, and I gave him a push, and he is dead, and I am glad of it"—that is another case. I should think that would be taken to be a confession of his guilt. And, if it were proved, in the other case, that he had said, at the moment, "It was an accident," anything which would make you suppose that it was an accident would go a long way to clear him.

5763. (To the *Procureur*.) Suppose the Constable says to the man, "How came you to throw the man off the precipice?" And the man at first says, "I did not do it." And the Constable then says to him, "We have somebody to prove you did;" and he then admits it. Would that be "temps non suspect?"—No; I think it would not be. The Constable would declare it against him, no doubt.

5764. Does not your exposition of the rule shew that whatever the accused has said at any time against himself may be evidence against him, but, in order to admit declarations made by him in his favour, they must have been made in a "temps non suspect?"—It is so.

* Bell's Dictionary of the Law of Scotland, vol. i. p. 579. Tit. EVIDENCE.

5765. The Commissioners, then, would interpret rightly your written answer to question fourteen, if they confined the qualification as to "temps non suspect" to the declaration of the party accused in his own favour?—Exactly.

5766. The *Bailiff*. Suppose the man were walking out the next morning with a friend, and he said, "As I was going down the road yesterday, I saw a man, and he tumbled over a precipice, and I think he is dead." I apprehend that, that appearing to be a bonâ fide conversation between two persons, would be evidence admissible in the man's favour. Suppose, the next day, the party against whom the accusation is made had had this conversation with his friend: "I understand so and so is dead; my brother saw him fall over the cliff." That would here be admitted as evidence in his favour.

5767. The *Procureur*. I think that would be admitted as evidence for him.

5768. (To the *Contrôle*.) You have heard the instance which the Bailiff has just given. Do you think it would come within the rule of evidence "en temps non suspect?"—I think I have heard evidence of that kind given.

5769. Do you agree in the principle?—Yes.

5770. (To Mr. *MacCulloch*, Advocate.) Do you agree in the instance which the Bailiff has given?—I do; but I think in all those questions a great deal must be left to the discretion of the Court. I have often heard almost every Jurat present say, "I am thoroughly convinced in my own mind that the man is guilty, but I do not think there is legal evidence to convict him."

5771. (To the *Contrôle*.) Where there is full proof from the confession of the accused, must the corps de délit be proved extrinsically?—Yes.

5772. Suppose such a case as this. A man might be heard to say, "A. B. left the Island last week; before he went I picked his pocket of his watch, and have lost the watch." Would that be sufficient to convict him?—No; the corps de délit must be proved in all cases.

5773. If the prosecutor was there and said, "Somebody, I do not know who, stole my watch," would the corps de délit be proved.—Yes.

5774. The *Procureur*. That is quite clear from Terrien, lib. xii., chap. xxxv., p. 523. "S'aucun recognoist en lieu commun le crime dont il est suy, luy-mesme se juge et damne. Pourveu que le crime soit verifié et qu'il n'apparoisse de l'erreur de la confession."

5775. (To the *Procureur*.) It would not be enough that the man was proved by half a dozen witnesses to have declared "I have stolen, and since lost, the watch of a man who has left the Island?"—No.

5776. When parties are in confinement under a charge of crime, has any body access to them"?—Yes.

5777. Who are the parties who have a right to see them?—After they are committed for trial, of course, their counsel has a right to see them; and any of their friends are admitted to see them and speak to them, in the hours from ten in the morning till two in the afternoon.

5778. Have the constables and the members of the police access to them?—Yes.

5779. Would the counsel of the accused have access to him at all times?—Yes; there is no difficulty.

5780. Mr. *Le Retilley*. They are allowed to see their friends without the presence of the gaoler.

5781. (To the *Procureur*.) Does the practice exist of the constables and the members of the police questioning prisoners upon their crimes when in confinement?—As to being allowed to do it, I will not say they are not allowed to do it; but, in practice, I should say that, when once they are confined, it is not usually done. I will not say it is never done.

5782. Are there any formal orders issued to prevent their doing it?—No; I believe there are no formal orders issued.

5783. If a stranger were to go to the prison and say to the accused, "It will be worse for you if you do not confess, and better for you if you do." Would that exclude the declaration made in reply as evidence?—I apprehend that in practice a declaration made to any body whomsoever, under such circumstances, would not be admitted.

5784. The *Bailiff*. I never had reason to believe that the English distinction, upon that point, existed here. I should rather judge, in case of any person exercising any influence upon the mind of the prisoner, the English distinction would be rejected.

5785. Mr. *MacCulloch* (Advocate). I believe that the promise or the threat must have been made by an authorized person, in order to exclude a confession; the constable or sheriff, or some one supposed by the party to have authority.

5786. The *Contrôle*. That is quite my view of it.

5787. The *Procureur*. The impression upon my mind is that, if the prisoner made a declaration under a promise or threat from any person, the Court would not admit it; but I cannot say that I have seen the question arise. I know that I should be against the admission.

5788. Mr. *Falla* (Advocate). With respect to a promise or inducement to a prisonner to confess, I have seen the confession so obtained brought in evidence against a prisoner here. And I have pleaded for the prisoner that the declaration made in consequence was not evidence; and in my conscience I thought there was no proof against the prisonner without that admission; yet I have seen the prisoner convicted. But I have heard the late Bailiff censure the constable for having done so. The prisoner, nevertheless, was found Guilty.

5789. (To Mr. *Falla*.) Censured, you mean, for holding out an inducement?—Yes.

5790. (To Mr. *Falla*.) Suppose there were neither promise nor threat, but the constable put a series of questions to the prisoner. Would that have any effect in excluding the answers?—I think not, in practice.

5791. Have you known constables censured for questioning prisoners in that way?—No. It is within my knowledge that the late Bailiff gave orders to the constables not to do so. It

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was in a case in which there was a robbery of some plate in the parish of Catel; and the late Bailiff told the constables that they were not to question the prisoners. That case did not come to trial. The plate in question was subsequently found in the house supposed to have been robbed. The accused were servants living in the house. In practice, and very lately, I have seen answers of the prisonors to constables brought forward in evidence against the prisoners: and it must be admitted by every one that it is always done in practice.

5792. (To the *Bailiff.*) Has the Court the power of discharging a constable?

The *Bailiff.* Upon judicial proceedings. I do not apprehend that they can do it ministerially.

5793. (To the *Bailiff.*) What control can the Court exercise to prevent such a practice taking place?—I should think that, in practice, if the rule was once or twice clearly laid down, the constables would follow it. Supposing that were not enough, and an Ordonnance were made to that effect, and that Ordonnance were broken, that would be an offence.

5794. Mr. *Falla.* When I first came to the bar, it struck me as so very unfair towards the prisoner that I objected to such answers being given in evidence; and I was overruled.

5795. (To the *Procureur.*) In reference to the 19th query, suppose the Crown officers decline to produce a document which is in their possession, and evidence is given which convinces the Court that there is such a document in existence, would the Court be entitled to admit secondary evidence of its contents?—I apprehend that can never happen; because the King's officers, who had a document in their hands which they refused to produce, would be exceedingly culpable. I apprehend that, if they were to refuse to produce any document, the Court might order other evidence to come at the truth.

5796. The *Contrôle.* I think the Court would cut the Gordian knot there by acquitting the prisoner.

5797. The *Procureur.* I think they would acquit, certainly; but I think they might admit secondary evidence.

5798. Mr. *De Courcy.* During the conspiracy trials here, there were meetings held by the Court without the presence of the Crown officers, which I apprehend to be illegal.

5799. (To the *Bailiff.*) Can the Bailiff and Jurats act as a Criminal Court without the presence of the Crown officers?—No.

5800. If they are without the Crown officers, what they do is null?—Yes. First of all, the Court cannot be opened unless there is a Crown officer present. They are present, as of right on their part; and one of them, as of duty, during the whole time the Court is open.

5801. The *Procureur.* It may be right that I should mention that I do not recollect any meeting concerning the conspiracy, on which the Court was in private without the Crown officers.

5802. (To the *Bailiff*). You say that the seal of a court of justice or a municipal corporation proves itself. Do you take notice of the existence of English Municipal Corporations?—Yes: it rarely arises, except in the verification of an affidavit. Suppose an affidavit comes with a seal of the Lord Mayor of London, or any other Municipal Corporation, it proves itself. In case of any dispute as to the existence of the corporation, if we find the power to be exerted we should hold the seal to be legal. It must be the seal of a Court or a Corporation. To the seal of a notary credit is not given. Those questions rarely occur in criminal proceedings. In civil proceedings, in fact, they do not arise as they do in England; because you do not prove every document you put in, but the Advocates communicate to one another their case, and there is no question raised, unless one of them is impeached. So that the general law with regard to the proof of documents is small. Again, it is diminished in criminal matters by the Interrogatory; because it generally happens that, if papers are material, they are either proved or admitted by virtue of the Interrogatory. In a case where you wanted historically to trace a man by anything which has been done, not bearing directly upon the offence with which he was charged, they would be put in, I apprehend, without very strict proof. They would be read historically, just as you would read Hume's History of England to ascertain what was done in the year sixteen hundred.

5803. A passport might be very important in a case of conspiracy. Should you hold the seal of a passport to prove itself?—Yes. I apprehend that the seal of a passport would be admitted; just as in England the post mark proves the date of a letter. A magistrate's signature is nothing here as a legal document; but, I have no doubt, if it were necessary to prove a fact for a collateral purpose, not to give validity to the instrument, it would be admitted. So, I can understand that an instrument under a notarial seal would be put in, not to give validity to the instrument, but to shew that, at a certain time, the man was in a certain place.

5804. The *Procureur.* If you wished to make use of a judgment of a foreign Court of justice, it has always been usual to have the seal placed upon that judgment by the proper authority, either by the Consul or the Ambassador: but I know that, of late years, powers of attorney from America have been admitted, though merely signed, in the first instance, by a notary, and afterwards the signature of the notary attested under the seal of the Court. But that is merely of very late occurrence.

5805. (To the *Contrôle.*) Do you agree with the Bailiff in his written answer, that it is not strictly legal on a question of character to give evidence of specific acts of good conduct on the part of the accused?—I should think not. I have seen specific acts of good conduct brought forward; but I do not think it is right, myself. Suppose a servant is indicted for larceny of property at her master's house; some other master where she lived might come and say, that on a particular day he trusted her with some money, and she accounted faithfully for it. I have seen evidence of that kind admitted.

5806. Mr. *Le Retilley* (Jurat). Always.

5807. The *Procureur.* Universally, I should say.

5808. (To Mr. *MacCulloch*, Advocate.) Does it ever make part of the body of the accusation that the crime is committed after a previous one?—No.

5809. There are three or four offences in England in which that is a substantive charge. For instance, in the case of uttering bad money, it is a felony to utter bad money after a previous conviction. Have you anything of that sort in your law?—I know no case of that kind.

5810. You say, in answer to the 22nd question of the third series, "The Crown Lawyers may produce former convictions against an accused party." You cannot in a prosecution make it part of the original case to prove bad character?—Certainly not.

5811. In a charge of theft you could not begin by shewing that the person had previously committed theft?—No.

5812. At what stage would the contradiction of the witnesses to character arise?—At the moment the prisoner's witnesses have been examined. As soon as their examination has been completed (that is supposing the evidence to be given *vivâ voce*), the Crown Lawyers, I conceive, have the right to recal any of their former witnesses, for the purpose of disproving the good character given to the accused by his witnesses.

5813. The Commissioners are contemplating a case in which the instrument of impeaching the good character is a previous conviction.—Perhaps, in order to understand it, I ought to state how those convictions are produced. The Crown lawyers speak last in giving their conclusions. They state the prisoner at the bar is an old offender, he has been previously convicted of such and such offences.

5814. That is in comment upon the character of the accused?—In their conclusions upon the whole case. It is brought forward merely for the purpose of justifying the conclusion for a heavier punishment.

5815. Is it not your course of practice that the conclusion of the Procureur and Contrôle, as to punishment, must be given before the decision of the fact has been come to?—Yes; the conclusions are given upon the whole together.

5816. That may be done, you say, though no witnesses have been brought to character?—It is continually done in practice. That comes pretty much under the same class of difficulty, I have mentioned, of obliging the prisoners to plead all sorts of things at the same time. In general, the prisoner is allowed to plead any objection in bar. In the case of Chapman, he was tried for murder, and the question of insanity was set up. I was obliged to plead that together with the plea of Not guilty in one speech, which embarrasses one very much.

5817. The Crown officers, you say, urge a previous conviction for the purpose of guiding the Jurats in awarding punishment. Is the means of doing that the production of the conviction?—Yes. The book is brought up from the Greffe.

5818. That is supposed to be in the possession of the Court?—Yes.

5819. What is the method of proving that the party at the bar is the person whose name appears in the book?—If there were any doubt about it, the Crown lawyers would have taken care to have summoned as witnesses, possibly the Greffier, or the constable who was cognizant of his being the party who committed the first offence. But it is scarcely necessary in practice, because those people are always so well known. Every Jurat will recollect the man having been before the Court a year or two ago; and the man will not deny it. Very frequently either the constable or sheriff, or serjeant, or gaoler, is called to prove the identity of the party.

5820. That is to say, he is ready to do so?—The Crown lawyers have him among their witnesses.

5821. Do you mean that, in the body of the case for the prosecution, they would prove that the man has been tried before?—Yes; I have seen that done.

5822. The *Contrôle*. I should conceive that that is irregular. My own idea of the practice is this. The previous conviction has nothing to do with the case before the Court whatever: but, after the Crown officer has gone over the facts of the case, when he comes to what punishment he thinks due to the case, he produces this conviction in his speech. And, if the prisoner's counsel were to say, "That is not the same man," the Crown officer would say, "I will show you it is." And, I conceive, the Court would allow him to prove it, though that is a very doubtful question. However, it is produced substantially as part of his speech, and only for the aggravation of punishment. I do not think that it has been allowed to the Crown officer to prove that a man, who is being tried for larceny, has been convicted of a previous larceny. That has not been done since I have been at the Bar. There is, no doubt, a great deal of license in all those things here; but, if it were denied by the prisoner's counsel that the person was the same man, I think the Court could take no account of it, unless the Jurats might happen to recollect him, and know him to be the same.

5823. The *Procureur*. Upon the question which has just been put, it has often struck me that it would be a great improvement in our way of proceeding, if two questions were put. The first being, "Is the prisoner Guilty or Not Guilty;" and then, afterwards, after the finding of Guilty or Not Guilty, "What shall be the amount of punishment," as a second question. Then the previous conviction might be produced. We have a positive law by which we cannot prove à deux fois. I am requested to mention that, in the event of there being two questions put hereafter, it might, perhaps, be proper to have it clearly stated that all the Jurats should be obliged to give an opinion upon the second point. I mention that, because I am requested so to do. Because it might happen that some three or four of the Jurats might think the man innocent, and the others might think him guilty; and it is thought that, in the event of the man being found Guilty, all should be obliged to consider him so, and should be obliged to give an opinion as to what, supposing him to be so, should be the punishment to be inflicted.

5824. The *Bailiff*. I think, that very question being raised opposes the strongest possible objection to the proposition of the Procureur.

5825. Mr. *Le Marchant* (Jurat). It would be very hard for me to have to pass sentence of death upon a man for murder, when I thought he was an innocent man.

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5826. (To the *Bailiff.*) If there is a division in the Court as to the innocence or guilt of the prisoner, by whom is the sentence now passed?—By the majority.

5827. In practice, does each individual of the Court say, "I think the sentence ought to be three months' imprisonment, or five months?"—Mr. *Le Marchant* (Jurat). Yes.

5828. The *Bailiff.* The mode of passing sentence is, that each individual Jurat states the amount of punishment to be inflicted. I agree with Mr. Le Marchant to some extent. In murder, the law awards the punishment; but, in a case of manslaughter, part of the Court may hold that it is excusable or justifiable homicide; some of them may think it is homicide to be punished by transportation for life. All those who thought it was excusable or justifiable homicide would vote for a nominal punishment, wherever the punishment is discretionary.

5829. (To the *Bailiff.*) You think they would not consider themselves bound by the decision of the fact?—I do not see how it is possible. Suppose a case of manslaughter, which, according to the facts, is capable of having two or three degrees of intensity upon it.

5830. Does not the same difficulty exist now?—The people who say "Not Guilty," say therefore, "No punishment." You ought not to call on them to say we are bound to award such and such a punishment, although we do not think him guilty.

5831. Is it not assumed that the fact of guilt, of its not being excusable homicide, for instance, is concluded before they are called on to award the punishment?—In that case, although they must give some punishment, they might give a nominal punishment.

5832. Mr. *Jeremie.* I will mention a case which actually occurred, and which, as it was the first case I had before the Court, made an impression on my mind. The man was accused of murder. There were nine Jurats present; three found that the man was guilty of gross negligence; three found that he had gone too far, that he was to blame; and three found that he was excusable, he having been grossly provoked, and that the result was a pure accident. So that there were three who condemned him to banishment; three who condemned him to three months' imprisonment; and three who acquitted him. At last, not being able to make up their minds upon the subject, one who thought there was some negligence, and who thought the man should have some punishment, went over to condemn him to be banished. On the other hand, one, who found there was negligence, considered three years' banishment too severe a punishment, and joined for the acquittal. Therefore there were left four on one side, and four on the other; and the other remained of his own opinion. So it came to the casting vote of the Bailiff, Mr. Brock, who gave his casting vote in favour of an acquittal.

5833. To Mr. *Jeremie.* In fact, five out of the nine found him guilty of crime and yet he was acquitted?—Because they could not agree as to the penalty. I think that is a more just way of having it than that the man (according to the system now proposed) should be condemned to a more severe punishment than it might be thought the case deserved.

5834. (To the *Bailiff.*) You give your casting vote in case of an equality. Is that, not only in case of an equality of two bodies, but wherever equal numbers of the Jurats hold different opinions?—A case occurred the other day, in which three were each of a different opinion. I coincided with the second one, and that was considered to be the judgment of the Court. One was for an acquittal; two were for a fine, one larger than the other. I said there are two for a fine; and I joined my opinion for the smaller fine. There is a case from Jersey, in the Privy Council Report, which throws some light upon that matter. And, I conceive, we should be bound by the principle of that case, though it would sometimes be very difficult to carry it into practice.

5835. Does it decide that, unless there is a positive majority in favour of some one opinion, the casting vote of the Bailiff must be given?—The case to which I allude was a civil matter; *Le Gros* v. *Le Breton,* reported in 2 Knapp, 181. There were three opinions among the Jurats. One opinion was, that the remonstrance in question ought not to be received at all; the second, that a certain measure of relief should be given; and the third, that a certain other measure of relief should be given. Those that were for rejecting the remonstrance altogether were the minority of the Court; but were a majority as compared with either of the two other opinions. Thereupon the remonstrance was rejected: but, on appeal to the Privy Council, it was held that, inasmuch as the majority of the Jurats were in favour of receiving the remonstrance, though they might differ in their mode of dealing with it when received, the Court ought not to have rejected it. The effect of this decision appears to be to lay down a principle for deciding what, under certain circumstances, shall be deemed a majority of the Court. In *Le Breton* v. *Ennis,* 4 Moore, 323, a subsequent case, also from Jersey, where, out of six Jurats present, there were three for one opinion, two for a second, and one for a third, it was held that judgment pronounced in accordance with the opinion of the three Jurats, no casting vote having been given by the Bailiff, could not be supported. And this, on the ground that by the law of Jersey a majority of the Jurats constituting the Court must concur. In Guernsey, the law is considered to be otherwise; the concurrence of an absolute majority appears not to be required. The opinion which has the greater number of Jurats in its favour is taken to be the judgment of the Court.

5836. (To Mr. *Carré,* Lieutenant Bailiff.) What is your view of the question? In the case of three being of one opinion, and three of another opinion, and three of a third opinion; would the Bailiff have a right to give his casting vote?—In practice, I think, the Bailiff is considered to have the right to give a casting vote. I know the question has been argued that it ought not to be so considered, because there was a majority for a degree of guilt.

5837. Mr. *Jeremie.* Suppose three were for three years banishment; three for imprisonment; and three for acquittal. The Bailiff has said, "Make up your minds; if you do not come to two opinions I shall know which way to give my casting vote." And, I think I may say, I have seen it done two or three times.

5838. Mr. *Le Retilley* (Jurat). Here is the record of the case to which Mr. Jeremie alluded;

and there were only eight Jurats present: therefore he must be under some misapprehension.

5839. Mr. *Jeremie.* I know there were three opinions.

5840. The *Contrôle.* Where three are for one degree of punishment, and three for another, it has been the general practice for the three who were for the higher punishment to join with those who were for the lower punishment.

5841. (To the *Bailiff.*) In England, it is very often the case that, in a state prosecution, a witness is asked who gave him his information, and the Court will not allow that question to be put?—I always understood the rule to be that, where it is a communication to some one in an official capacity, the question cannot be asked.

5842. The case where it has oftenest occurred has been, where police officers are the witnesses. In a case of coining, it is a very ordinary question to ask them, "Who told you where to look?" The Court stops that.—I think that only applies to a case where the person to whom the information is given is in some official character.

5843. Are you prepared to say what the rule is on that subject here?—No: I am not.

5844. Can any gentleman of the Bench say whether that point has been discussed here?—

5845. Mr. *Carré.* I have never heard it.

5846. The *Procureur.* We know nothing of the rule to which the Commissioners have referred. I would wish to add, that there is a case where an advocate, Mr. Le. Cocq, was compelled by the Court to declare what had been told him by his client before he received a retainer from him in the cause. Mr. Le Cocq refused: he stated that he had been for many years counsel for his client in every case, or nearly every case; and that, in this particular case, there was something connected with this power of attorney. At the same time it appeared that he had not then received a retainer for anything connected with that case; and he was obliged to declare. That is the impression upon my mind.

5847. (To the *Bailiff.*) Do you think there would be any distinction between the case of an enquête and of a trial with regard to putting such a question?—No.

5848. Mr. *Carré.* With respect to the case of the Rev. Daniel Dobrée, I should wish to observe that the English rule did not apply to that case, as far as I can understand it. The general rule, as laid down by Mr. Justice Eyre in Roscoe's Law of Evidence,* is in these words. "It is perfectly right that all opportunities should be given to discuss the truth of the evidence given against a prisoner; but there is a rule, which has universally obtained, on account of its importance to the public for the detection of crime, that those persons, who are the channel by means of whom the detection is made, should not be unnecessarily disclosed; if it can be made to appear that it is necessary to the investigation of the truth of the case that the name of the person should be disclosed, I should be very unwilling to stop it; but it does not appear to me that it is within the ordinary course to do it, or that there is any necessity for it in the present case."—*Hardy's case,* 24 *How. St. Tr.,* 808. I should say that, in ordinary cases of a trial at the bar, such a necessity would rarely occur; but, in the case under consideration, it was precisely such a case of necessity. It does not appear to me that the English rule was applicable to this case; because it was the case of an inquiry where every means were used to obtain witnesses to throw light upon the case. It was considered that the person making the declaration to Mr. Dobrée would be just the person capable of throwing light upon the facts.

5849. You think it came within the qualification of the rule laid down by Mr. Justice Eyre?—Yes.

5850. The *Bailiff.* I stated that there was no difference between an enquête and a trial. I think I was incorrect on two grounds. It would be unnecessary upon the trial, and yet might be necessary at the enquête; that is taking one point of view. And, again, an objection to this is the public disclosure of the name of a party; that applies to a public proceeding, and not to a private proceeding. Upon both those grounds it appears to me that I was inadvertent in the expression of that opinion.

5851. The Rev. *Daniel Dobrée.* Mr. Carré is quite mistaken in his view of the case, inasmuch as, if you will turn to Sir James Graham's letter, you will find that the Royal Court of Guernsey were only entitled to try the parties for seditious language. The question put to me did not regard seditious language, but who gave me the first information of the conspiracy.

5852. (To the *Procureur.*) Mr. Dobrée suggests, in a paper he has laid before us, that there is some rule or authority which forbids a clergyman giving information received by him in that character. Is that so?—I apprehend, if any authority was produced, it was only some dictum of a French authority, which states that a priest, who receives information under the seal of confession, is not obliged to declare what is told him.

5853. The *Bailiff. Gilham's Case,* 1 *Moody, C. C.* 186, is a very strong one; because there a clergyman extracted a confession by telling the person that it was necessary to his salvation.

5854. The Rev. *Daniel Dobrée.* The case of Richmond Seymour was a case directly in point. He was tried at Reading some years ago before Mr. Justice Park.

5855. To the *Procureur.* You think there is some French authority that a priest is not allowed to divulge what he has received under the seal of confession?—That he is not obliged to do so; I have no doubt there is.

5856. The *Bailiff.* There is no doubt that that which was given in confession ought not to be divulged.

5857. The Rev. *Daniel Dobrée.* In the case of Richmond Seymour, Dr. Meyrick had a question put to him: he refused to answer it; and Mr. Justice Allan Park waived the question.

5858. (To the *Contrôle.*) It has struck the Commissioners that a great many practical difficulties must occur in criminal proceedings from the Court having to decide both the law and the

* Roscoe "On Pleading and Evidence in Criminal Cases," p. 147. Edition of 1839.

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fact. Have you considered how far it would be better to have a distinct tribunal, something in the nature of a Jury, to decide upon the question of fact, leaving the Court then to decide upon the legal question, and to apply the punishment to the crime if the other tribunal found the party accused guilty?

5859. In that point of view a change in the system might be desirable certainly. I have no doubt there are considerable difficulties in the present system, as to the issues of law and fact being tried by the same persons; but the difficulty I see would be, that the remedy of introducing any other tribunal would be worse than the disease. I do not see how you are to carry it out.

5860. Suppose you said that four Jurats with the Bailiff should form the Court, and that the other eight should sit apart from them and decide upon the fact,—there would be a technical separation of the two?—The first difficulty would be that you would always require the twelve Jurats to be present.

5861. You think it would be desirable to have a separate tribunal for the trial of the fact, but that the difficulty is to carry it out?—Yes. I conceive that the alteration would be desirable.

5862. If a portion of the Jurats were taken as a tribunal to decide upon the fact, you say it would oblige the attendance of all the Jurats?—That is one difficulty. And the second is this: that I should conceive it very difficult for the eight Jurats, who are accustomed to decide law and fact, to separate themselves in that way, and dwindle into one half their functions.

5863. Perhaps, also, gentlemen who have been accustomed to decide the law, would not be inclined to take the law from any one else?—That is an insurmountable difficulty, I think, with regard to the present Court.

5864. Is there any objection to the selection of jurors here, in the same mode as is pursued in England?—There are numberless objections. The first objection I will mention is, the language: if the jury were taken from the town, the great majority of the inhabitants there are much more familiar with the English than with the French language; and it is exactly *vice versâ* in the country parishes. I conceive that you would have to try many cases in French and many cases in English. What I mean to say is, that I do not see how a jury here can be constituted as respects either of the two languages. If you had it in French, you would exclude a great mass of the most respectable inhabitants of the town; and if you had it in English, you would exclude the great mass of the respectable inhabitants of the country. I conceive that would be a great practical difficulty. I do not see how the system could possibly work, except you have a jury in both languages.

5865. Might not you have a jury of townspeople to try townspeople, and a jury of country people to try those who live in the country?—The difficulty would be in the witnesses and the counsel. Suppose a country jury are trying a case, and an English witness comes forward: his evidence would all have to be interpreted to the country jury. I conceive that would lead to an incessant complication. Again, if you have an English jury, and a man comes up who talks the Guernsey patois, that would have to be interpreted.

5866. The difficulty would only be met by having a jury, like the jurats, who can speak both languages. Could not that be found in Guernsey?—I do not say it could not be found; but it would exclude a vast number of respectable inhabitants.

5867. You think that would very much limit the number of the jurors?—Yes.

5868. The *Bailiff*. You would exclude those who *could* not understand both languages, and those who *would* not.

5869*a*. The *Contrôle*. You would exclude a vast number of respectable country farmers for the English; and you would exclude the great body of the English residents here, many who are domiciled and settled here, for the French.

5869*b*. Perhaps, also, there would be some difficulty in making a selection?—Certainly there would. Again, a man who did not wish to sit on a jury, would say, "I do not understand the language sufficiently." You would have perpetual difficulties in respect of the language.

5870. You think they must be selected. Could not they become Jurymen by being rated to a certain amount?—They must be selected; and you would exclude a vast number of persons who, otherwise, would be perfectly competent to serve on the Jury by language. The next prominent difficulty I conceive to be the extraordinary number of family connections in the Island, and connections of interest; particularly family connections.

5871. You think that, if the right of challenge were allowed for relationship, there would be a difficulty in getting the requisite number of men to try a prisoner?—Yes. It is not only the actual or blood connections, but the connections by alliance, and connections of interest. The next circumstance of difficulty is the publicity which every circumstance obtains in every part of the Island. I do not think you could ever get a Jury who would come into Court without some previous knowledge and impressions upon the case to be tried. That might not apply to petty cases; but it would apply most strongly in all cases of importance. The moment a crime is committed, everybody talks of it. There are a vast number of people here who have no business to attend to, and who do nothing else but talk; and there is no crime of any importance committed here which is not canvassed and talked about in every domestic circle. It may be objected that the same thing applies to the Jurats, who may have heard a great deal about the crime before they come into Court to decide upon it. But there is this strong difference. The Jurats are constantly under the eye of the public: and every decision which they come to in criminal cases is come to in public, each man giving his opinion. He is therefore before the tribunal of public opinion in each individual case.

5872. Is it your practice here for each individual Jurat not only to give his vote, but to state his opinion both of the law and the fact?—It is so; except in cases of appeal in civil cases. Jurors, on the contrary, on retiring from the trial go back into the mass again, and are no

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longer before the public. To shew the Commissioners what I have mentioned, as to the Jurats being prominently before the public, you may remember, since you have been here sitting on this inquiry, what a number of cases have been brought before you, decided years and years ago, in which the conduct of the Jurats, and what they have said and done, has been brought before you. It continually happens that what a Jurat has said is remarked upon in public; and, of course, the Jurats are careful and guarded, and much more careful and guarded than Jurors would be. Jurors also, I believe, would think nothing of talking upon the case before they came to try it. They would talk of the matter with their friends. Now, I conceive, that the Jurats, knowing they will have to judge of a case, which Jurors would not know, are very careful and guarded not to talk upon it, but rather to keep aloof from any conversations upon it. There are a great many English residents here, who are not rate-payers. It is not usual to put the English residents upon the rate, unless they have bought property in the Island. I conceive, if a Jury system were established, the fact of a person not paying the rate, which is a mere act of favour on the part of the parish, would not be an objection to his being a Juryman.

5873. You are aware that in the neighbouring Island of Jersey they have a Jury of twenty four?—Yes.

5874. (To the *Bailiff*.)—Will you favour the Commissioners with your opinion upon this question?—First of all, as a general proposition, I conceive that the distinction of law and fact is of considerable importance; and, in that point of view particularly, a jury is a more convenient mode of trial than a Bench of Magistrates. I do not know that it is so much so in a small community, as in a large one. I mean that the advantages of distinguishing law from fact arise in a large community more than in a small one.

5875. Do you mean on account of the more limited number of cases?—Yes. All we should look to in a trial by jury here would be the result in each particular case; and I think the mode of conducting the business in particular cases, as a general proposition, is more satisfactory by a jury than by a Bench of Magistrates. I do not, however, think the mode of trial here is open to many of the objections to which a Bench of Magistrates may be open under certain circumstances; and I can see considerable difficulties in respect to a system of trial by Jury. The difficulties, which I see, are those which exist (though perhaps not to the same extent) in the Welsh Counties. There, as here, you have a double language and a small district.

5876. In what sense do you mean a small district?—The counties are much smaller than in England. There are fewer people; and they come from a smaller district of country. First of all, with respect to the language. I take it that every man who is in a jury-box has a right to say, "I do not understand your language, not being my own." And you cannot go into the question, whether he understands the foreign language more or less; because, unless he understands it competently, he is not a good juror. That necessitates having both a French and an English jury, which is objectionable on two grounds; for, if you have a French jury and an English jury, you will have, probably, one tone of feeling in one, and one in the other, which would be intensely mischievous. Besides that, it would not answer; because in a French case you may have two or three English witnesses, and *vice versâ*. If you have one juror who does not understand, you must have an interpreter: and I take it that an interpreter is the greatest impediment to the extraction of truth. I believe every man who knows anything of the Welsh procedure, which I do not know except by report myself, is perfectly convinced of that. It puts the counsel at arms length, and is a shield which it is very difficult to battle against. That is one great advantage of the Jurats; they are competent to understand whichever language turns up. Then the next objection which arises is with respect to the smallness of the district and to the local feeling, which is considered an objection in the Welsh counties, so much that, when the Welsh counties were thrown into the English circuits, it was proposed to club two counties together, in order that you might have a larger field to get your juries from; and that was objected to, not because the evil did not exist or because the remedy was a bad one, but because the counties were afraid of losing their independent existence. That was a mere county feeling. Here you have a district much smaller than the Welsh counties; and the feeling therefore is more intense. You might call this like a Welsh hundred rather.

5877. When you speak of a district, do you mean a district in point of space?—I think you must take population and space together. Here, particularly in the country parishes, you have an intense local feeling. They are people who have succeeded from father to son, and have transmitted their feelings from one generation to another. Then I also feel another difficulty, which has been mentioned by the Contrôle,—that the Court, as at present constituted, acquires the habit of dealing with trials as a matter of business, and that under the eye of the public, so that there is a habit of responsibility which would press much less strongly upon jurors. I think that is much stronger here than it is in a large county in England, where less attention is paid to the proceedings of the quarter sessions. There is another consideration also, with respect to the introduction of a jury; the introduction of a jury, as I understand it, must involve the having a single Judge. I do not see the necessity of having more than one judge, if you have a jury. That appears to be a principle which is completely established by the municipal corporation alterations. Clearly having a full Court and a jury besides would be a considerable impediment: and probably either there would be one presiding Judge, or one presiding Judge with a very limited number of assessors. If so (and probably it would come to one presiding Judge), you put a much higher requirement upon that Judge than you do under the present circumstances. A great deal more then would depend upon the efficiency of the presiding Judge than does now. A greater degree of efficiency would be absolutely requisite then than is the case now.

5878. Would not the fact of his being the single Judge tend to render him efficient?—It

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might stir him up, perhaps; but, where we have but twenty trials in the year, perhaps that would not make him very efficient. There is not practice enough to make the presiding Judge master of the law of evidence at all efficiently, if he was not so before.

5879. Do you think the thirteen have a greater mastery of the law of evidence than a single Judge would have?—I think so. Their recollections and knowledge would probably run over a greater length of time than his would.

5880. Probably the present gentlemen of the bench have acquired their knowledge from acting as Judges?—Very likely. It is not stronger than this, that, if you have not business enough for a man to master it by his own experience, you are assisted by having more persons from whom to gain information.

5881. There is always a great difficulty, is not there, in forming a very efficient tribunal for a small district?—I should conceive so. I will add also that there are considerable difficulties in detail, as to points reserved and so on, which would create some embarrassment in working out the system.

5882. Do you think that the objection could be got over by leaving it optional with the prisoner whether he would have a jury or not?—If you have the system of a jury, I would have it regularly, and not accidentally. If you have a jury, the more you work it the better, because you give it experience.

5883. (To the *Procureur.*) Is not it the case that a jury is optional in the law of Scotland in certain cases?—In some cases I believe so. Alison, in page 89, says, on the subject of jurors, "No more specific rule can be laid down for the weighing of such testimony, but that it must be such as produces conviction of guilt in a reasonable mind; and that if any serious doubts are entertained by the jury. it is their duty to acquit the prisoner. It is to be regretted that the composition and habits of our juries under the late Act of Parliament is such as, in many parts of the country, to render them in a great measure incapable of exercising the important duty of weighing any long chain of evidence, and that when the trial has endured a considerable time, the merits of the evidence too often enters but little into the formation of their verdicts."

5884. The *Contrôle.* In England there are a much greater number of different subjects which occupy the public attention than we have here; the consequence of which is, that everything that takes place in the Court here occupies the public attention more prominently than anything else, and the Court becomes in criminal trials a sort of theatre. Anything that takes place in the Court, and even the particulars of a case before it is tried, form a very prominent part of the newspaper topics. There is another objection which has occurred to me, which it may be proper to lay before the Commissioners; and that is as regards the duties of the Crown officers. The introduction of a jury would necessarily, I conceive, very much change their duties. I mean their duties would then become analogous to those of the Crown Counsel in England. They would merely have to lay the case before the jury, and would have no ministerial functions, if I may so express myself, to perform.

5885. The *Bailiff.* It would be a great question, then, whether it would be for the Crown officers to advise the Court as to what punishment to give, and who should give the sentence, whether the Judge presiding at the time, or the full Court.

5886. If a change as to the duty of the Crown officers would be beneficial, it might be made without the trial by jury. If such a change would be mischievous, the trial by jury, you think, would carry it with it?—The *Contrôle.* Certainly.

5887. The *Bailiff.* There would be considerable difficulty as to who was to award the punishment. If it were left to a single Judge, it comes to my former proposition, that the Judge must be a more efficient person; because the judge now has the advice of the Crown officers upon the point, of which he would be then deprived. It would be out of the question, I take it, to go on with the practice of the Crown officers advising the Court upon that subject.

5888. (To Mr. *Carré.*) Will you favour the Commissioners with your opinion upon the subject?—I do not wish to say much on the subject; the question must depend a good deal upon the feeling which the people of the Island have with respect to the way in which justice is administered in general. I consider that in every country it is absolutely necessary that the sentences, particularly in criminal matters, should satisfy the public mind. Therefore, as to the question as it now stands, with respect to the introduction of a new law, I should say that my own opinion or that of any other Jurat upon the Bench must not be taken as having any weight against the public opinion, one way or the other, in a matter of this kind. I have had no experience whatever of the manner in which the system of a jury works in other countries; therefore it is only by imagining what might be its results here that I can come to any conclusion upon the subject. It is quite clear that keeping distinct the questions of law and fact is a matter of considerable importance in a general sense; but it does not appear to me to be equally clear, as to the result of the operation of a jury in individual cases, that there is more certainty of justice than in a Court constituted like the present Court. I should say that the habit of weighing evidence, which is acquired by constant practice in both civil and criminal cases, enables a Jurat to decide questions of fact with more probability of arriving at the truth than a juryman, particularly in a small place like this, where, without a considerable degree of habit, it is difficult to prevent private feelings from interfering with questions brought before them. As to the general effect of the introduction of a jury, it would be open to many objections. In the first place, I doubt whether the verdict of a jury would have an equal weight with the judgment of the Court. I think it would be liable to produce certain evils in practice. For example, a prisoner would be likely to produce a vast number of reasons for challenging individual jurymen, which would have to be discussed, and often offensively,—reasons which might be offensive to the party, and create evil results and important results in society.

5889. That objection would not be confined, perhaps, to what took place through the right

of challenging, but generally?—Yes; though now that does occur, to a certain extent, with the Judges; yet the knowledge that it is imposed upon them against their will, as of duty, tends to diminish the evil results of such feelings.

5890. Mr. *Le Marchant* (Jurat). I quite agree in what has been stated on the subject.

5891. Mr. *De Havilland* (Jurat). I consider that any change, of the kind proposed, would lead to the sapping of the second privilege which we have. When I speak of the second privilege, I consider our first privilege to be that of being under the Crown of England; and the second is that we elect our Judges. I feel certain that the establishment of a jury here must do that away in a very short time. The Judges in England are appointed by the Crown; we have not therefore the same reason for requiring a jury here, since the Judges are elected from among the people. The making a part of the Bench jurymen would lead, I fear, to very great difficulty; either the number must be increased, or those appointed must always be here, which would be very irksome. Very soon, if juries were appointed, we might expect that the remainder of the machinery adopted in England would be established here, and that we should have Judges sent by the Crown; juries would be more expensive than our present proceeding; and any additional expense would be raised among us by a sort of county taxation, as in England.

5892. How would a jury be more expensive than the present system?—It would lead to other machinery.

5893. The *Bailiff*. The summoning of the jury would be a matter of some considerable expense.

5894. Mr. *Andros*. In a large country the chief recommendations of a jury are that, where political considerations may weigh, the accused is protected from the undue and improper bias of the Judge, who is appointed by the Crown without any voice of the people. Another recommendation of the trial by jury is that a man is judged by his peers. Here we are all sufficiently upon a level as for each class to understand the wants and habits and usages of the other classes; so that the Jurats are competent to judge of the case of any man who comes before them. They are sufficiently his peers to satisfy him with the verdict which they come to. Guernsey-men think it one of their proudest privileges to choose their Judges; not only as an idle boast, but because it gives them satisfaction. They are satisfied to be judged by those whom they have appointed. It might be said perhaps, on the other hand, that the English here are not satisfied; but I am sure that they are. I have always heard them say that they would much rather be judged by the Court here than by a jury. There may be a few individuals who may be disposed to contradict what I am saying; but I believe that is the general feeling. As to the English language, I quite agree in all that has been said of the great difficulties of introducing it, supposing even I were satisfied that a jury was desirable. It must not be understood, however, that I or the other Jurats are opposed to the introduction of a jury, if it could be carried out; I think there is something to be said in its favour. But looking to the question altogether, I decidedly think that the jury would not be so desirable as the present Court. It is not from a feeling that we should be curtailed of our power. I do not think that that weighs with any of us. We have been compared to a Bench of Magistrates; but we much more represent a jury with a presiding Judge, I think. It has been said that matters of law and of fact are mixed up together: but it is well known that it is very difficult to determine where questions of law begin, and questions of fact begin. And, considering the way in which the Bailiff sums up (particularly the present Bailiff), in which he gives his opinion of the law and the fact, I think it may be a very good thing if the Judge gives his opinion temperately upon the fact as well as the law even to a jury. It has been laid down, I think, by persons of much more experience than I have, that it is a good thing for the Judge to go discreetly into the fact as well as the law. Of course, from the smallness of our district, we could not have a change of venue; we could not get rid of impressions in particular cases by changing the venue. We are all so nearly situated, that we must put up with that inconvenience without being able to remedy it. Another consideration is that, I think, the system works so well that it would be a great pity to run the risk of giving us a worse one. We know the evils, if there are any (though I think there are no serious evils), of the present system; but we cannot see exactly what would be the result of any change. And, I think, it would be a great pity to change a system which really works upon the whole in a way which very few people can object to. The Commissioners have been here many days; and they must have seen how very few charges have been brought forward against us.

5895. Mr. *Carré*. I take it for granted that it has always been the practice for the Bailiff to take upon himself to sum up questions both of law and fact.

5896. Mr. *Le Retilley* (Jurat). I quite concur in what has been said, though our opinions, in a question of this kind, must not go for much, being parties interested perhaps: but, as being a question which concerns the whole community, I think they ought to be consulted upon a question of that kind. If they are of opinion that a jury would be better than the present system, by all means have it: but I think you will find the very general opinion in the Island to be that they are satisfied with the present state of things. I think, then, that that opinion ought to weigh something in the question of the alteration of the present system. I doubt very much whether the materials could be got to form a jury from our country parishes. In many cases, I am sure, you would be at a great loss in doing so.

5897. Having juries exclusively from the town you would probably consider a very great evil?—I should.

5898. The *Procureur*. In a case of this kind, which concerns the whole Island, I quite concur in what has been said by the Court.

5899. Mr. *De Havilland*, (Jurat). I agree perfectly with Mr. Le Retilley, that it is a matter of that nature which ought to be put to the States in a body, to know the feeling of the community

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upon the subject. And I should say that the Bailiff's summing up and the question as to the Law Officers ought not to be lost sight of.

5900. Mr. *Metivier* (Jurat). If I were to consult my own individual feelings, I should be glad of any change which would relieve me from a portion of the responsibility which is placed upon me: but I have a duty to the community to discharge; and that points out to me, that the machinery could not be got at, nor could it work well, in a country so circumscribed as this. If the Commissioners will have reference to the list of rate-payers, they will see what would be the difficulty in forming a jury list.

5901. From the difficulty of finding people assessed in a sufficient amount?—Yes; a sufficient number of people who would be able to serve as jurymen among the rate-payers. A great many of them are either minors or persons who have attained an age when they could be no longer called on to perform the office.

5902. Mr. *Le Retilley* (Jurat). Most of our country farmers, who are on the rate, are persons of very limited means, and could not afford really to give up the time to the public that would be required. I am quite convinced that they would object, to a man, to be compelled to serve as jurors.

5903. (To Mr. *MacCulloch,* Jurat.) Do you agree in what has been said by the Bench?—I do.

5904. (To Mr. *Jeremie,* Advocate.) What is your opinion upon the subject?—I should consider that there are two arguments against it. First of all, from the manner in which the evidence would be taken. If you had a jury, some would understand French and others English: and, with respect to the witnesses who give their evidence in one language, it might be much better for them perhaps, to give it in the other, and that kind of evidence would be most difficult of all for us to understand. Besides, we are a very peculiar people. We all like to have our opinion in this place; and how you would get twelve men to agree upon a point of fact, I cannot say. The community here is a small community; and every individual takes a part in local politics, and has family connexions; and they are so interwoven, one with the other, that it would be very difficult for persons to come with unprejudiced and unbiassed minds to decide any question of fact. Besides, the challenge of jurors would present a difficulty. The Commissioners inquired yesterday respecting the challenge of Jurats. The difficulties with respect to the challenge of jurors would be insurmountable. We have lately extended the right and power of electing douzeniers to the cantons of the town parish. I should say that those represent very fairly, in point of talent and fortune, the districts from which they are chosen. I put it to any individual who knows anything of those gentlemen, whether, if he were called up for his fortune, his life, or anything he holds most dear, he would confide most in the cantonal douzeniers, or in the body of the Royal Court. With the system of the Court, there are always some who are seniors in years; they obtain by practice, if they have not by education, a knowledge of the rules and principles upon which the fate of property depends, as well as the fate of one's honour and liberty. Another thing, which I consider to be a great objection to the introduction of the system, is this. If you introduce the system, it creates faction; faction is the bane of letting in persons to meddle with what does not concern them; and it would spread. There are individuals now who may get into parochial offices; and each in his little sphere may gratify his little ambition: but, when it comes to a questionof life, or property, or honour, I do not think the Island, from its limited locality, would put up with it. And the reason we have so little faction here (while there is so much in the neighbouring Island), is precisely because every one here knows what he has to do; whereas in Jersey they do not. One of the Commissioners put a question the other day, the answer to which greatly surprised him. It was, "If an individual wished to be upon the rate-list, what measures he was to take?" There was not a person here to instruct him: and the Procureur was obliged to go to a case occurring many years ago as to a douzenier in St. Peter in the Woods to instruct him. That must show to the Commissioners, more than any other fact, the total absence of faction. And why is it? Because the system of jurymen and people meddling with what they do not know anything about does not exist here. Then, as to talking about it being the privilege of the Island to be judged by ourselves and about the other privileges of the Island, that has nothing to do with it. The real question is, Is it a beneficial and proper manner? Because it is not popular opinion which is to decide. There is another observation I will make, which is this: that the chief magistrate has his opinion, and he makes it known to his brother Jurats, so that all are at perfect freedom to adopt it or not; and, as a matter of course, he has the weight of wisdom on his part. We ourselves, as suitors, desire that there should be as many Jurats as possible to decide a case, because we feel that with numbers there is security. We think that the decision of one or two magistrates would not have the weight which the decision of a bench of magistrates would have, composed, as it is, of those who have nothing to expect from the Crown or any other department. I think they offer the best and strongest means of administering substantial justice. It must not be supposed that, because there are now only two gentlemen who have been educated at the English bar, there have not been always such. There have always been four or five most able men, who have directed the proceedings by their wisdom, their intelligence, and experience, and some of whose judgments have excited the admiration of many English Judges. I see before me persons who are the descendants of eminent individuals, Mr. Carré, for instance. He has succeeded to the position of his father, than whom nobody has ever carried more weight. And the same observation would apply to several other individuals, the late Mr. Carey, for instance. There never was a more able man than he was. I say therefore that a system, which has continued so long from generation to generation, should not be easily disturbed; particularly as it hinders the spirit of faction, and of men meddling with what they little understand.

5905. Mr. *MacCulloch.* The subject has been so fully discussed that I need not enter into

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any details. My opinion decidedly coincides with that of the Contrôle upon the whole matter. I think the introduction of trial by jury would lead to a great many evils. I think the thing would work very much as I have seen it work in Jersey. It is by a majority the jurors decide. In the case of the woman, Le Gendre, she was not found guilty of murder, but of manslaughter. What was the consequence? There was such a cry raised against the jurymen that those who had given their opinion that she ought to be convicted of murder went to a printer to get him to issue a placard, stating that they were of opinion that she ought to be convicted of murder. If I were put upon my trial for an offence, I should be very sorry to be tried by a jury in Guernsey.

5906. Mr. *Falla.* I owe it to myself to express the opinion which I hold upon the subject of a jury for a small Island like Guernsey. When I first came to the bar, having lived in France many years, I could not conceive how a Court composed of the Bailiff and twelve magistrates, being compelled to decide upon fact and upon law, could give satisfaction or render justice. I was decidedly opposed to that system; and I was decidedly of course in favour of a jury. I believe I expressed my opinion very freely for a few years. But, when I became acquainted with the system of the Court, and also when I came to compare a country like France or England with a very small community like Guernsey, I felt myself compelled to change my opinion. And, although I was as much for a jury as any man living, I came to the opinion that a jury could never answer for a small place like Guernsey. I saw that what might be good for a large community would be quite the reverse for a small one. In France or in England, but more particularly in France, they all doubted the integrity of the Judges, because they were appointed by Government and paid by Government. And I must admit that a jury there, in very many cases, is an admirable institution. But here we do not require it. And by the practice I have had, and knowing what takes place in a small Island like this, I myself feel that, if I were tried to-morrow, if Guilty, I should say, "Let me be tried by a jury in Guernsey, because I have a chance of getting acquitted." But, if innocent, I should say, "No, let me be tried by the Court." I do not express that opinion to support the opinions I have heard from the Bailiff and the Magistrates. I have always had an opinion of my own. I have found fault with many acts of the Court; and I do not admire the whole system, as I have already stated. It has been stated that it might be optional for a prisoner to be tried by a jury. I declare, in conscience, from what I have seen of the acts of the Court, that my first advice to a prisoner would be: "If you are guilty, say that you wish to be tried by a jury; but, if you are innocent, allow yourself to be tried by the Court." And, in my opinion, it is very natural that I should like to be tried by men who could appreciate evidence, who are in the habit of hearing evidence every week, and who are, of course, more acquainted with human nature than men would be who were called to try a prisoner only once in a twelvemonth. In Guernsey, if I only took the trouble to make inquiries what the jurymen might have declared before they came into Court, I will say that I might challenge two thirds of the jury for the opinions they had expressed upon the case before them; because, in a small Island like this, every thing is known from one end to the other in twenty four hours. In England, if anything takes place in one parish, you will not hear any feeling expressed in the neighbouring parish or within three miles. In Guernsey it is quite otherwise: and I think that, to men not in the habit of judging, it would be very dangerous to entrust the power of deciding upon cases of which they had heard a great deal before they came into Court. The institution of a jury here, in my opinion, would be the means of getting two out of ten guilty persons acquitted. At the same time, I think, there would be the same danger of getting two innocent persons out of ten found guilty. My opinion therefore is, that a jury here would not be an advisable measure to adopt; and I should be very sorry, as a Guernseyman liable to be tried as any other person, to see it instituted.

5907. The Rev. *Daniel Dobrée.* As rector of two country parishes, and as a member of the States, I hope the Commissioners will not consider it presumptuous in me to express my opinion, and give my reasons in answer to what these learned gentlemen have stated. I am rector of two of the most distant parishes in the Island, where the English language perhaps is least of all used. But I can safely assure you that in those remote parishes, among the rising population particularly, English is almost as well understood as French is now. In proof of that assertion, I will mention that our country people usually come to town and make their bargains in English; that they are pretty nearly all of them, or have been, militia men, who either give or receive the word of command in English, and are called on to command Englishmen, if required to do so. I would also state that at my own country schools the boys before quitting, say at about twelve years of age, can almost invariably read English, as well as they can French.

5908. Are those schools numerously attended?—Very; almost universally. And so great has been the progress of the English language of late, that, in three parishes circumjacent to mine, an English service is now always given on Sundays. If you go into any of the shops in the town, they will converse with you, and serve you with anything you may require, equally well, in ninety nine cases out of a hundred, in English, as in French. I think those are pretty strong proofs of what I began by asserting. Mr. Utermarck, the Contrôle, has stated, as a reason against trial by jury, that family connection and party spirit would render it inadvisable. But does not family connection and party spirit already exist upon the Bench? Look at the facts which have been this day elicited: and I leave the question to the Commissioners. The Contrôle has given as another reason against trial by jury being established here, the publicity which is often given to evidence by jurors. He says that a quantity of busy persons are always spending their time here in telling or hearing the news. So it was at Athens of old; and so it will be in every part of the universe where people have little or nothing to do. We are not singular in that respect.

5909. The question rather is, whether family connections and party spirit are not in them-

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selves objections to the trial by jury?—I think, if the Commissioners will compare the evidence given after the Enquête at the late conspiracy trials with the *Star* of that period, they will find that some of the Jurats or some of those persons must have been very leaky indeed. It has been already said before you to-day that the Jurats meet often in private; that they are connected with each other; that they are bound together by ties of the strictest confidence and mutual support, and almost unbounded confidence in each other. I believe that every case almost is prejudged before it comes into Court. The Contrôle has stated that the jurors receive a charge from the Judge. I conceive that to be the greatest recommendation of the system. Jurors not only receive a charge from the Judge, but they are bound to abide by it to a certain extent; for no Judge in England will allow a jury to give a verdict contrary to the evidence; yet we have heard that some of the Bailiffs here have been obliged to succumb. I think we shall find by an Order in Council, lately issued regarding the Mauritius, that the English language has been established there among a mixed community. Permit me to say that we are equally mixed. Another objection raised by the Contrôle was that there were not sufficient rate-payers out of which to constitute a jury. But every stranger, as he is called, after he has resided here a year and a day, by law is capable of being put on the tax. Of those English residents there exist no less a number at this moment than six thousand persons. Will any one tell me that, among six thousand persons, twelve good men and true cannot be found? We must be sunk to a very low ebb here indeed. It is paying a very bad compliment to the English residents to say that, amongst six thousand persons, twelve good men and true cannot be found. My opinion is, that the real objection of the gentlemen at the Bar, whom you have just now listened to, is the fear of losing the situations which they now hold, and being competed with by Englishmen; that Englishmen, who know nothing of French, might be chosen. The situation of advocate then, I hope, would be open to the English Bar, and the competition given for foreign talent, the same as it is in the Church and at the College. What is good in one case holds good in the other. The Bailiff has mentioned an objection regarding the Welsh counties, and says great difficulties exist there on the score of trial by jury, so much so, that it has been proposed to club two counties together. I am aware that such difficulty does exist; but, if the same difficulty were to be found to exist here, not the least objection in particular cases could exist, I should think, in clubbing Guernsey with Jersey. The Bailiff has expressed the opinion, that a sworn interpreter is a great hindrance to the administration of justice: will he say there is a great bar to the administration of justice at the Old Bailey in London, where foreign juries are constituted and exist almost every day in the week for Frenchmen and foreigners of every description? It has been said that party feeling and party spirit are an objection in the case of jurors: but, if they exist in jurors, how much more strongly may they not exist in Jurats, who perhaps are derived from the same aristocratic families almost from generation to generation. The Bailiff has intimated his opinion that, if trial by jury were instituted, it would be necessary to have a more efficient Judge. The Bailiff is Recorder of Dartmouth; and I think he is quite as competent here as he is at Dartmouth. When he condemns a man to punishment there, he does not consult the Jurats; and, if he is efficient in one place, it appears to me he might be efficient in the other. But, if he feels himself incompetent, why not extend the Western Circuit to these Islands? Advocates might plead in French or English in these Islands: but it is necessary, in almost all cases where jurors or Jurats exist, that they should have some authorized director, against whose opinion they cannot give a verdict. Consider the case of an Englishman, who comes to be tried here, whether guilty or innocent I will not decide. The pleadings against that man, and perhaps a great part of the evidence, take place in French. There is no sworn interpreter to interpret to him.

5910. Mr. *MacCulloch.* There is the counsel.

5911. The Rev. *D. Dobrée.* That is by accident. There is no sworn interpreter to interpret the evidence or the proceedings to him; and by that means he loses many valuable opportunities, which he otherwise would have, of putting questions to prove his innocence. Why not then, at least, leave it optional to the man to be tried either in one language or the other, or by one system or the other? If it is said that Guernsey men are incompetent to understand English, how much more may it be said that Englishmen generally are incompetent to understand French. Take the two cases, and I would say that Guernsey men understand much more English than Englishmen do French. The Contrôle has called this court a theatre. I am glad I have not done so. I have seen a good many farces acted here, it is true; but, as to the expenses, if there was a Judge on the Bench who by virtue of his office might take the part of the prisoner, as is the case in England, the prisoner might very often be spared the expense of counsel at all. Mr. Carré admits that, in the comparison between jurors and Jurats, the Jurats must be interested persons. I am quite satisfied that the result of the present Commission will enable the Commissioners to judge for themselves whether trial by jury is necessary or not. I give it as my opinion that it certainly is. How can a Jurat understand the case of a man better than a juryman? I have always heard it laid down by all English Judges, and it forms a principle of every law book I have ever met with, that the great privilege of an Englishman is to be judged by his peers. Inquire who are the Jurats. They are all gentlemen of property; they all stand in the rank of rich men; they know not the cravings of want, nor half the temptations to crime; and yet you see those very Jurats, or you have seen them, awarding the same punishment to an unfortunate youth who breaks a knocker in a drunken brawl, and a man who attempts the life of his neighbour, and nearly succeeds in it, with malice aforethought. I judge of no man's motives; but permit me to say that such a case as that, such parity as that, could never have occurred, I hope, in England. Whether the Jurats are as immaculate as a jury or not. I think no case can illustrate more strongly than the case I adduced yesterday, which Colonel De Havilland was pleased to call an election. I mean about the fellowships. I think, when every man is allowed to plead his own cause, and when all the talent of the bar is ranged against a single party,

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it can hardly be called an election. I should call it on the part of the Jurats absolute predestination. It is a maxim of scripture that all Christians should let their light so shine before men that others may see their good works. I think we have seen some works to day which cannot exactly come under that category. Col. De Havilland also says, that one of our great privileges is to chuse our Judges. We no more chuse our principal Judge here than they do in England. The Bailiff is named by the Crown: and, as to all the rest of the Jurats, if they did their duty, they could not, even if they would, give a verdict against the Judge's charge: but here you find they do. What then is the use of the Bailiff? As to experience, talking of the experience of the past is like begging the question; because, as has been observed, it ought to be a matter of right, and not of public opinion. Upon the subject of expenses: they are already pretty great; but I see no objection, if trial by Jury were established in the Island, to jurors being compelled to attend gratis, as they are compelled to attend gratis at the States meetings and such like. I have already stated that the Jurats in general are not peers or equals. It has been stated that many a man is afraid to challenge the Bench, because he may be looked upon as a black sheep and become a marked man. But that could never exist in England; and a very strong reason exists upon that head, why Jurats should be challenged, and why the same Magna Charta of equal rights, which exists in England, should be put in force in this Island. How are the English represented in this Island on Juries? They are totally excluded; and yet I conceive that one half of the persons who are tried perhaps are Englishmen by birth. As a matter of history, if you look to the case of the Doges of Venice, the Inquisition in Spain, and the Thirty Tyrants in Athens, you will find they were done away with by the people precisely on the same principles as those which I am now advocating. With respect to the case of the placard in Jersey, I would say that certainly it was very improper; but the same thing might have taken place here, as regarded the Jurats. I myself saw the Governor placarded as a perjured man: and the men who so placarded him would have very little regard for the feelings of the Bailiff. I now come to what has been said by Mr. Falla: and it is a most remarkable fact that this change of opinion, which took place in his mind, arose after he had been called to the bar. All the benefits of a liberal education, all the acquirements and learning which he had obtained in France, appear to have led him to an entirely different conclusion; but, the moment he came to Guernsey, his opinion changed entirely. I must say it was a very extraordinary and sudden conversion. With respect to what he has said about the summoning of the jury, and the mode in which their minds would be prejudiced before they came into Court, I think it would be very easy to summon a number of jurors, more than would be necessary for the occasion, and that it would be not at all necessary to tell those men what case they came to judge. It is never told the jurors in England what case they are wanted for. They are sent for from distant parts of the country, and are put into the box, and then are told what is the case they have to try; and they are not permitted to leave that box till they have given their verdict. I have now, perhaps, sufficiently announced it as my opinion, that there ought, in this community, to be but one Judge, one law, and one language.

5912. (To the *Bailiff.*) Have you sufficient causes in one day to make it doubtful to a jury what cause they were coming to try?

5913. Certainly not: we have only one cause in a day.

5914. The *Contrôle.* The Commissioners will see, by the statistics, that there are not above twenty causes in the course of a year tried here.

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*Thomas John Blondel Falla,* Esq.—further examined.

Thomas John Blondel Falla, Esq.

5915. Having been told, at the beginning of the inquiry, that the limit of the power to make laws by the Royal Court is the written law of the land, and that the written law is Terrien and the Approbation, the Commissioners wish to see how far the written law furnishes them with the means of ascertaining to what extent crimes are defined and punished. With respect first to Larceny. What the Commissioners find in Terrien, Lib. xii. chap. xi. p. 477, is only an Ordonnance of Francis the First relating to highway robbery, directing that parties who are convicted of it should be broken on the wheel. That chapter does not appear to be approved, so far as relates to the punishment. But chapter xx. of the same book of Terrien treats expressly "*De larcin.*" What is the actual punishment for Larceny here?—It is very difficult for me to answer that question.

5916. We do not even find the term "Larcin" in your law. Will you tell us how the word has disappeared here?—It has disappeared from all the late actes d'accusation. I cannot say how it has disappeared.

5917. The *Bailiff.* The only reason I can suppose is, that there being no verb for larcin may have led to it.

5918. By Terrien, at page 491, Lib. xii. chap. xx, Larceny may be punished with death; and branding is also mentioned as a punishment. And Le Marchant, in his Remarques, says, "En cas de peine de mort nous n'avons accoustumé d'user d'aucun supplice fors que de pendre et brusler, selon l'exigence du cas," citing the Approbation on chapter xi. Can you burn for robbery or larceny now?—No.

5919. How has the burning disappeared?—I cannot say. I do not know of any law to forbid that punishment.

5920. By chapter xx. of Terrien the punishment of Larcin for the first offence is whipping; for the second, whipping with cutting off the ear and branding; and for the third hanging?—That has entirely disappeared. It is not put in practice. For the first robbery committed the man

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may be flogged. I have seen a man flogged for the first robbery he had committed in this Island where there was violence.

5921. Do you ever brand now?—No.

5922. Can you by law?—I dare say the Court can by law.

5923. Could you burn by law?—I should think so.

5924. Have you the term "Roberie," as a crime existing at present?—No.

5925. Will you refer to Lib. xii. Chap. xxviii. p. 501 in Terrien, and read the passage beginning "De roberie"?—"De roberie doit l'en sçauoir que clameur en doit estre faite en ceste forme. Je me plain de G. qui en la paix de Dieu et du Duc m'assaillit, et me batit et me fit sang et playe, et me tollit ma chappe en roberie: pourquoy me convient crier Haro. Et suite de roberie, si l'en sçait par l'enqueste du pays, que Haro ne fut crié, cil qui suit encherra de sa suite. Roberie n'est pas larcin furtiuement fait: mais est un brigandage ou destroussemẽt fait à force et avec outrage de la personne robée." In practice we have not the term "roberie."

5926. Is the punishment of robbery capital now?—It might be.

5927. It appears from Terrien that unless a person made Clameur de Haro he could not sue the person for robbery?—In practice it is not the case: but still there is the law; and it is "approvée."

5928. You have no peculiar law for Piracy as opposed to robbery, have you?—No.

5929. What is the punishment for piracy?—It would not be tried here.

5930. You have no jurisdiction of the seas?—No.

5931. There appeared to be a doubt about it, the other day, whether there was or not?—I have never seen any exercised.

5932. Suppose, in a Guernsey vessel, a part of the crew rose upon the master, and seized the vessel, and by means of that vessel seized other vessels, among them a Guernsey vessel, and then that she put in here. Would the Court have jurisdiction?—I do not think the Court could try them for piracy; for the robbery they might.

5933. The *Contrôle.* I think it is very difficult to say what would be done in a case of that kind. Properly speaking, we have no Admiralty jurisdiction here.

5934. The *Procureur.* In a case of piracy, Queen Elizabeth ordered the Court to judge in that particular case; and the order is to hang two or three of the most guilty and send the others away.

5935. The *Contrôle.* That was in the nature of a Commission. That case, or a case similar to it, will be found in the Appendix to the case between the Governor and the Royal Court.

5936. "Le 12e jour du Mois de Juin, l'an 1599, devant Louys Devyck, Baillif; présen sà ce, Jean Saumarez, Pierre Carey, Nicolas Martin, Léonard Blondell, Nicolas Lefevre, Pierre Bréhault et Hellier Le Pelley, Jurés; présent aussi à ce Monsieur le Gouverneur.

A été présenté une certaine lettre de la part de mes Seigneurs du très Honorable Conseil Privé de Sa Majesté; dont la teneur en suit.

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| The L. Keeper | The L. North |
| The L. Treasurer | Sir Willm. Knollys |
| The Earle of Notingham | Sir R. Cecyll. |
| The Earle of Hunsdon. | |

After our verye heartye commendation, the enclosed petition hath been exhibited unto us in the behalf of one John Blondell of the Isle of Jersey, Marryner; wherein complainte is made that he hath been detayned in prison the space of fifteenth months past upon suspicion of piracie, wherewith he was charged by one Peter des Moulins, a Frenchman, who neither by himself nor his sureties that undertook to prosecute the cause for him, have made any proofe of the said accusation against Blondell (as we are informed) after such long time of his imprisonment; whereof report having been heretofore made to our the Lord Admyrall by Sir Thomas Leighton, Knight, Governor of that Island of Guernsey, I directed my letters or warrant to the Bailiff and Jurats there to send up the said prisoner unto me; to the ends he might receive speedy trial here, if any such matter were to be objected against him; notwithstanding, they have detained him still in prison, neglecting to send him unto me, in contempt of my said direction as it seemeth; we have been therefore moved to wryte these our letters unto you, whereby we do require you to take this present order that the aforesaid John Blondell may upon receipt hereof be forthwith enlarged out of prison, and good bonds taken of him both for his appearance before us (by some convenient time to be by you assigned) to answer what he may be charged withal concerning the cause before mentioned; as also to give his attendance on us for that purpose untill we shall finde cause to dismiss him. And so we bidd you heartelye farewell, from the Court of Greenwich, the 29th of May, 1599.

Governor, Bailife and Juralts of Guernsey.

Le deuxième jour du Mois de Juillet, 1599, par-devant Léonard Blondell, Lieutenant de Louys Devycke, Bailly; présens à ce, André Garis, Jean Andros, Pierre Beauvoir, Pierre Carey, Nicolas Martin, George Guille, Nicollas Lefevre, Pierre Bréhault, et Hellier Le Pelley, Jurés; présent aussi à ce Monsieur le Gouverneur.

Sur la venue de l'avant dite lettre de Messiegneurs du Conseil Privé de Sa Majesté à nous addressée pour l'élargissement de l'avant dit Jean Blondell, avons yceluy fait convenir par-devant nous et suivant la teneur dicelle l'avons eslargy et mis en liberté en baillant soubs son seign et sceau obligation de la somme de Trois Cent Livres sterling aux Officiers de Sa Majesté de faire son apparence, dans le 15e jour du mois d'Aoust prochain, par-devant nos dits Seigneurs pour répondre à ce qui lui pourra être objecté et de donner son attendance jusques à être renvoyé, lorsque leurs Seigneuries trouveront cause.

5937. *The following papers were delivered in by the Bailiff.*

"After our Commendations,

Whereas We have been given to understand that the Bailiff and Jurats of His Majesty's Royal

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Court of the Island of Guernsey have taken upon themselves, not only to send a summons to Sir John Mylne, Bart., Commander in chief in that Island, requiring him to make his appearance before them, but also to threaten him with damages for detaining a Swedish Brigantine, called the Seven Brothers, laden with Iron, &c., for St. Malo's, notwithstanding His Majesty's commands had been signified by Henry Fox, Esq., one of His Majesty's principal Secretary's of State, to the Lord Delawarr, Governor of Guernsey, and, in his absence, to the Lieutenant Governor or Commander in Chief, to take effectual care that no Military Stores of any sort should be permitted to be sent to France; which proceedings of the said Bailiff and Jurats, in assuming to themselves the power of summoning the Commanding Officer of the Island to appear before them, and at the same time to threaten him with damages for having paid a dutiful obedience to His Majesty's Commands, signified by his Secretary of State, as before recited, cannot but be looked upon as unwarrantable and derogatory of His Majesty's Royal Authority, vested in the Commanding Officer in that Island, as likewise a contemptuous proceeding against His Majesty's Commands as aforesaid:

We are therefore to signify to you His Majesty's dissatisfaction at such your proceedings, and do require and command that you do not, upon any pretence whatever, presume to act in like manner for the future; but that, in all cases where you may have any reason or cause of doubt with regard to the conduct of the Commanding Officer, you are to send over to His Majesty, at this Board, a representation of the fact, that His Majesty may signify his pleasure thereupon to such Officer. And for the more effectual preventing sending lead or any Military Stores or habiliments of War to France, it is His Majesty's further pleasure, that no ship or vessel, belonging to His Island of Guernsey or any other of His dominions, be permitted to sail from Guernsey without first shewing to the proper Officers their bills of lading, and to what place they are bound, nor without taking a clearance from the proper Officer thereto (if there be one), otherwise from the Receiver of His Majesty's Revenues in that Island, or such other person as shall be appointed by the Governor for the time being; for which clearance such officer or other person is hereby required to receive no more than one shilling, sterling money of England. And so we bid you farewell. From the Council Chamber at Kensington, the 14th day of June, 1756.

Your loving friends,

(Signed) GRANVILLE, P. HOLDERNESS,
QUEENSBURY & DOVER,
DELAWARR, WALPOLE,
BERKELEY, CORNWALLIS.

To the Bailiff and Jurats of His Majesty's Royal Court of Guernsey.

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"Le premier Décembre, Mil sept-cent Quatre-vingt trois, devant William Le Marchant, Ecuyer, Baillif, présents, Charles Andros, Nicolas Reserson, Elizée Tupper, Jean Carey, Thomas Dobrée, James Hubert, Jean Guille, et Eléazar Le Marchant, Ecrs., Jurés.

La Cour étant ce jourd'hui extraordinairement assemblée, sur la plainte de Monsr. Thomas Knight, négociant de la ville de Bristol, qui arriva hier, environ les dix heures du matin, en la Rade de cette Isle dans son vaisseau, le Rainbow, dont Jean Roach est maître, que Monsr., Le Lieut. Colonel Basset, Commandant en Chef en cette Isle, l'auroit fait saisir, environ les dix à onze heures du matin par un Officier Militaire, accompagné d'un soldat, comme il était à vaquer à ses affaires en cette ville; et que le dit Officier l'aurait ensuite envoyé, sous la garde du dit soldat, prisonnier sur le Corps de garde, et de là envoyé prisonnier au Chateau Cornet; le dit Officier ayant dit que la raison du dit Commandant en Chef, pour ordonner les dits arrêt et emprisonnement, est parce que le dit vaisseau du dit Mr. Knight avait une flamme (Anglicé "pendant") déployée au haut de son mât, nonobstant les Ordres du dit Commandant en Chef. Et les Officiers du Roi ayant été de la part de la Cour au dit Commandant en Chef, et l'ayant informé que les dits arrêt et emprisonnement sont subversifs des droits des sujets du Roi, et dérogatoires aux privilèges et immunités particulières de cette Isle, afin de l'engager à remettre le dit Mr. Knight en liberté: et le dit Commandant en Chef leur ayant donné pour réponse, "That any person who disobeys his orders, he has a right to imprison for twenty four hours; that he had confined Mr. Knight for having hoisted his pendant, contrary to his (the Commander in Chief's) orders; and that he considered this affair as a private dispute between him and Mr. Knight:" et les dits officiers du Roi lui ayant dit, "That the Court did not consider it as a private affair, but an infringement on the rights of the subject, and a violation of the rights and privileges of the inhabitants of this Island," le dit Mr. Basset leur a repondu, "That he did not mean to infringe the rights of the people; but that he was authorized to act as he had done, and would support or enforce his authority; and that the Court might complain of him if they pleased:"

La Cour prenant le tout en considération, ouie la conclusion des dits officiers du Roi, a délibéré:

1°. Qu'elle ne connait aucune instance qu'aucun Gouverneur, Lt. Gouverneur ou Commandant en Chef de cette Isle ait jamais empêché aucuns vaisseaux d'avoir leur flamme déployée au haut de leur mât ou prétendu avoir droit de l'empêcher; la pratique immemoriale étant que les maîtres de vaisseaux marchands (ni ayant de vaisseau du Roi présent) déploient leurs couleurs sans aucun empêchement dans aucun cas; mais ordinairement, dans les jours de fêtes, ou pour complimenter leurs bourgeois, passagers ou autrement; conséquemment que le dit Commandant en Chef s'arroge un droit vexatoire inconnu à ses prédécesseurs.

2°. Que la prétention du dit Commandant en Chef, d'avoir droit d'emprisonner pour vingt-quatre heures aucune personne qui désobéit à ses ordres, est illusoire; pareille authorité n'ayant été exercée de mémoire d'homme par aucun de ses prédécesseurs que dans des cas fort graves et dont ils devaient répondre, ou sur des personnes de la lie du peuple, pour maintenir la discipline de la milice; conséquemment, que l'arrêt et l'emprisonnement du dit Mr. Knight sont despotiques, arbitraires et destructifs aux libertés dont doivent jouir tous les sujets du Roi, et qui distinguent si heureusement le gouvernement de notre auguste Souverain.

3°. Qu', à l'égard de la réparation demandée par le dit Mr. Knight contre le dit Monsr. le Commandant en Chef, La Cour, concevant que le dit Commandant en Chef n'est point, pour le présent, justiciable devant cette Cour, elle a cru qu'il est de sa justice de le certifier à Sa Majesté, afin d'en ordonner et d'accorder le remède en loi au dit Monsr. Knight qu'en Sa sagesse et Sa justice Elle jugera propre.

La Cour, pour ces raisons, et pour empêcher des actes d'authorité qui militent contre les droits les

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plus sacrés des peuples et qui, s'ils n'etaient arrétés, exposeraient les habitans de cette Isle à toutes sorts de malheurs à été d'opinion de transmettre, en toute humilité, ce présent acte à Sa Majesté et sur ce de lui faire ses très humbles remontrances."

5938. The *Bailiff.* The question of Piracy was also brought before the Commissioners in 1607. The passage relating to it is at page 27 of the "Documens relatifs à l'Ile de Guernsey." The passage was read on a former day.

5939. (To Mr. *Falla.*) By what law is any punishment inflicted for robbery, except that which is laid down in Terrien? You never hang for mere robbery?—Never. It is the law of the Island, as stated in Terrien, that vol domestique is to be punished by death. That law is not put in force; but to tell you how it has been altered or has ceased to be put in force, I cannot. I do not know of any law authorizing the Court to substitute another punishment.

5940. The *Procureur.* Except the general law which states that the punishment is to be left à l'arbitrement du Juge.

5941. What is the passage in Terrien to which you refer?—The Note at page 530, Lib. xii. c. xxxix. "*Ou autre peine.*" "Les peines des crimes sont toutes arbitraires en ce Royaume; si non d'autant qu'il y en a de statuées, indites et imposées par les édicts et ordonnances Royaux. Et combien que la loy die *quòd facti quidem quæstio in arbitrio judicantis est, pœnæ verò executio non ejus voluntati, sed legis authoritati reseruatur:* toutes fois le Juge auec cognoissance de cause peut augmenter ou diminuer la peine, selon les circonstances; c'est à sçauoir, selon l'honnesteté ou vilité des personnes, selon leur aage, selon les merites de la vie précedente; selon le dol et malice des délinquans, ou pour autre cause raisonnable."

5942. (To Mr. *Falla.*) That appears to be where no specific punishment is laid down. Whence does the right of the Court to transport criminals arise?—There is no law authorizing the Court to transport.

5943. It does transport, does not it?—It does: but I conceive the Court has no right to do so.

5944. (To the *Bailiff.*) What is the routine when a person is ordered for transportation?—A notice of it is sent over to the Home Office; and a letter comes from the Home Office directing that the prisoner should be sent to Millbank; and certain certificates are to be signed. The first thing is to send to the Home Secretary a statement of the judgment, that the prisoner is to be transported to such place as Her Majesty in Council shall direct, and requesting accordingly.

5945. A direction takes place in consequence, does not it?—The *Procureur.* An Order in Council is usually sent by a messenger.

5946. The *Bailiff.* An Order in Council is sent with the letter.

5947. (To the *Bailiff.*) That Order in Council does no more than direct the particular place; it does not set the punishment in motion?—I do not recollect the precise form of the Order in Council.

5948. Mr. *Falla.* I pleaded that, in the case of Smith, who was tried for forgery here. I argued that the Court had no right to transport a prisoner; but my objection was overruled. That was in the year 1842.

5949. (To Mr. *Falla.*) Do you think the Chapter in Terrien (Lib. xii. chap. xxiv.) "*De recepteurs et complices des mal-faiteurs*" alludes to stolen goods?—I think so.

5950. The *Bailiff.* I think the word "Receleurs" would now be used in that case.

5951. Mr. *Falla.* The words "ceux qui les receptent" evidently refer to those who receive and harbour the evil-doers themselves; but the words "Parçonniers" and "Consentans" include the receivers.

5952. Have you such a crime as simply receiving stolen goods by itself, not treated as an act of larceny?—Yes; at least cases have occurred.

5953. What is the punishment?—From a fortnight to three months' imprisonment.

5954. As much of that time as the Court thinks proper on bread and water, probably?—Yes.

5955. That would not be tried "au Grand Criminel," would it?—No; "A l'Ordinaire."

5956. The *Bailiff.* I suppose the limit might be banishment for any period not exceeding six years.

5957. (To Mr. *Falla.*) Suppose a person trusted by his master with money makes off with it; what should you call that?—We should call that "frauduleusement approprier."

5958. What would be the punishment?—It depends upon the discretion of the Court. From a fortnight to two or three months' imprisonment, and a part on bread and water. The Court might condemn the person to banishment for any period less than seven years.

The *Bailiff.* The form of the accusation would be, à telle peine, punition, ou châtiment corporel, que la Cour trouvera condigne.

5959. Have you any written law making fraudulent appropriation a crime?—No.

5960. The term "Péculat" in Terrien, Lib. xii. c. xvi, is confined to the appropriation of public moneys is it not?—Yes.

5961. You do not admit that chapter of Terrien, do you, according to the "Approbation?"—No. But it has been admitted to be a crime in the case of Dorey, the parish-officer. He was the Procureur des Pauvres; in his accounts he stated that he had given money to so many poor families; it was found out that he had not. He was supposed to have appropriated about 100*l.*; and he was sued for the offence, "frauduleusement approprier." I pleaded that there was no crime of Péculat, and that he could not be found guilty of any crime, and consequently that he must be acquitted. The Court overruled that; and he was condemned to two months' imprisonment. I pleaded that that chapter was not approved; and that it was therefore no law of ours; and I maintained that the crime of which he was accused was the crime of Péculat.

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5962. Under what law was he punished? If your criminal law be derived from Terrien and the chapter which constitutes péculat be not approved, how do you get any law in this country applying to a case of péculat?—I do not know of any law; and, I conceive, the Court was not authorized to inflict a punishment upon that man; especially when it is so well defined by the Commentary. "Ceste ordonnance est assez clere qu'elle entend Péculat estre larcin des deniers du Roy commis par ceux qui en ont la charge et administration, combien que de droict il s'estende plus loin."

5963. The *Contrôle.* The Court held that this chapter of Terrien had effect only as regards the particular Ordonnance of François I. there mentioned, for increasing the punishment; thereby showing that it was a crime punishable before that Ordonnance existed; and that therefore the Approbation merely excluded this particular Ordonnance, but left the crime punishable by the common law.

5964. Are we to understand that, by the common law of Guernsey, there is a general principle that a thing, which appears to be prejudicial and in the moral sense of the word wrong, may be punished?

5965. The *Bailiff.* I think there is a general notion of misdemeanor at common law, particularly in the case referred to, of misconduct on the part of a public officer.

5966. (To the *Bailiff.*) May the Commissioners understand, in the first place, that you do not hold yourselves bound to the punishment laid down in Terrien and the Approbation; that you do hold yourselves entitled to substitute another; and also that you are entitled to punish generally crimes which you do not find there?—I take it that there are crimes punished which are not found textually in Terrien. The Court was inclined to think, in that case, that it was a common law offence; and inferred, from the language of Terrien, that there was a common law offence of the kind.

5967. (To the *Bailiff.*) Are not crimes punished sometimes without any precedent?—I do not know.

5968. The *Contrôle.* The case which has been referred to is an instance.

5969. Mr. *De Jersey.* Bell, in his Dictionary, says:—"In Scotland, the supreme Criminal Court has an inherent power to take cognizance, to a certain extent, of new offences; and is authorized by usage to inflict an arbitrary punishment, that is, a punishment not affecting the life of the offender; and generally speaking, and in the ordinary state of society, and for practical purposes, this system is attended with great advantages. According to Mr. Hume, it is thus far beneficial to the public, "that the evil is repressed in its beginnings, and more effectually than "it ever can be by any statute, because all statutes are liable to be partial and defective in their "descriptions of new offences; and thus the transgressor finds the means of eluding the sanction, "and the law itself falls into contempt. But it is also a merciful course to the offender; because "the crime, being censured on its first appearance, and before it has become flagrant or alarming to the community, is restrained at that season by far milder correctives, than are "afterwards necessary to be applied to it, when the growing evil has come to require the "passing of an express law in that behalf. Thus in England, the sending of incendiary or "threatening letters is punished with death, in virtue of certain statutes, which passed at a "time when this sort of wickedness prevailed. But our Judges punished the first offender of "this sort (whose trial was within these fifty years) with transportation; and it has never been "found necessary to seek authority for any higher or more rigorous judgment."*—*Hume,* vol. i. p. 12. I think that expresses the principle on which we should act here.

5970. (To the *Lieutenant Bailiff.*) You do not hold yourselves bound, where one special punishment is mentioned in Terrien, to adhere to that punishment or to abstain from another?

5971. Mr. *Carré.* I should think not. What Terrien says upon the subject is clear upon that point, that the Judge is not bound specifically to any one punishment; but may inflict another provided he does not go beyond.

5972*a*. Do you hold that the Court could do that in its character of a Court?—Yes.

5972*b*. In its legislative character, of course, it could not; because it would thereby change the written law?—It could not.

5973. If that be so, your judicial power exceeds your legislative power in that sense?—You may consider it so. We have no right, sitting in Chefs Plaids, to bind the Court sitting in judgment upon an offender to a specific punishment. The passage from Terrien, cited by the Procureur, shews clearly that the Court are not confined to a specific punishment.

[Adjourned.]

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*Saturday, October* 10, 1846.

*Maurice De Courcy,* Esq., further examined.

Maurice De Courcy, Esq.

October 10th, 1846.

5974. Have you any further observations to make to the Commissioners?—With reference to the observations which were made yesterday, as to trial by jury, I would say that I would prefer the Court being a little more before the public. It was said that the Court were constantly before the public; I take leave to say, that the Court are too frequently in private among themselves; I refer to the sittings au secret. I think that the Bailiff made one observation, which I will take the liberty to remark on, that he thought the twelve best men could be dispensed with at public meetings. Without reference to the Bailiff and these twelve men, I deny their being the best twelve men, or the twelve most sensible men in the island. Colonel De Havilland spoke of the loss it would be to the privileges of the Island, the nomination of Judges coming from the Crown. His respected father had an appointment from the Crown, and certainly no difficulty arose from that appointment.

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* Bell's Dictionary of the Law of Scotland, vol. ii. p. 170., title LAW.

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John De Havilland Utermarck, Esq., Contrôle de la Reine.

October 10th, 1846.

*John De Havilland Utermarck*, Esq. (Contrôle de la Reine), further examined.

5975. You may recollect that Mr. Tupper, on a late occasion, addressed the States in English. They objected, but let him go on for that time?—Yes.

5976. He protested against the present practice, did he not?—Yes. There was no formal protest put in.

5977. A formal protest was put in by the Douzaine, was not there?—Yes; at their then Assembly.

5978. The *Bailiff*. A formal protest was made by the Town Douzaine; and they sent it in the shape of a letter to me, as President of the States. The following is the protest.

*The same was delivered in, and is as follows.*

Délibération.

C. W. Tupper, Ec^r., un des Députés de la Douzaine de la ville et paroisse de St. Pierre Port, dans la séance des Etats de cette Ile, tenue le 21^e Août dernier, ayant, ce jour, informé la dite Douzaine qu'il adressa la dite assemblée des Etats dans la langue Anglaise (la langue, dans laquelle tant lui que d'autres membres de la dite Douzaine sont dans l'habitude d'exprimer leurs opinions dans les séances de la dite Douzaine), et qu'il fut interrompu dans sa dite adresse; et par une décision de la dite Assemblée des Etats il lui fut permis par faveur de finir sa dite adresse à la dite Assemblée; mais qu'il fut aussi déclaré par la majorité de la dite Assemblée, qu'il ne serait plus permis à aucun membre des dits Etats d'adresser les dits Etats dans la langue Anglaise: a Douzaine, sensible que, dans l'état actuel de la société, la langue Anglaise est la langue du commerce et de l'usage le plus général dans la dite ville et paroisse; sensible qu'une grande partie de ses membres est dans l'incapacité de s'exprimer librement dans aucune autre langue; sensible de l'importance d'une expression libre et facile des opinions et des sentimens de tout Député envoyé aux dits Etats; sensible aussi que les dits Etats ont sanctionné l'usage de la langue Anglaise dans leur Assemblées, en permettant à un Magistrat de la Cour Royale de se servir constamment de la dite langue: A déclaré acquiescer au protêt verbal du dit C. W. Tupper, Ec^r., contre la décision des Etats du 21^e Août dernier; et déclare autoriser Messieurs les connétables de la dite paroisse à transmettre au Président des Etats cette présente délibération, afin qu'il connaisse les sentimens de la dite Douzaine à ce sujet, comme, aussi, à prendre toutes et telles mesures qu'ils trouveront nécessaires à ce sujet, dans l'intérêt de la dite Douzaine, bien entendu que telles mesures seroient préalablement soumises à la dite Douzaine.

Séance du 25 ^me Août, 1846.

5979. The *Bailiff*. The Town Douzaine of the parish consists of twenty two members, that is, of twenty Douzeniers and two constables. The Lieutenant Bailiff has since received a counter protest, signed by ten members of that Douzaine, which I will also hand in.

*The same was delivered in, and is as follows.*

Guernesey, ce 8^e Sept^re. 1846.

Monsieur,

La majorité de la Douzaine Centrale de St. Pierre Port (alors présente) ayant protesté contre la décision des Etats du 21^e Août, qui ne permet à aucun membre à l'avenir d'adresser cette Assemblée en Anglais, nous, sous-signés, déclarons formellement notre différence de sentiment à cet égard, et vous prions, Monsieur, de vouloir bien exercer votre authorité et votre influence afin d'empêcher un document si anti-national d'être enregistré sur les records des Etats,

Nous avons l'honneur d'être,
Monsieur,
Votres très humble et obéissants serviteurs,

| | |
|---|---|
| Fred. C. Lukis, Doyen, | Elie. Thos. Guerin, |
| Frs. De Putron, | Jean De Putron, |
| H. D. G. Agnew, | W. B. Moullin, |
| John Mellish, | Bonamy Collings, |
| Havilland Carey, | Alfred S. Collings. |

5980. Mr. *Carré*. Mr. Tupper commenced addressing the States in English; and a member of the States objected that he had no right so to do. Some discussion took place, and I stated, as the then President of the States, that French was the language of the States. It is the language in which the Billet des Etats is written, and in which all the proceedings are entered; it is the language of the States; and no other language could be spoken without the leave of the States. At the same time I expressed an opinion that probably the States would be ready to grant that permission, if he wished to have it. It was put to the vote, and was carried; but there were several of the country Deputies who objected to it, and objected to it on the ground that they did not understand English; some that they could not follow him; and others that they did not understand English at all.

5981. In the States probably the majority would prefer French to English on account of the great number of country parishes represented?—The persons who speak chiefly are not from the country. There are more people who do not understand English than who do not understand French. I should say that everybody understands French; but there are some who do not understand English.

5982. Is there anything like a possibility of getting at the fact, how that would be as to the population, taking the Island in a mass?—I cannot give you any information.

5983. Mr. *Dobrée* (Jurat). I should say, it would very nearly come to a balance in this way, that the population of the Island is nearly equally divided between the town and the country.

5984. Mr. *De Havilland*. The town population is about three fifths, and the country two fifths; and part of the inhabitants of the town parish, included in the three fifths, are actually country people, residing in the suburbs of the town.

5985. Mr. *Dobrée* (Jurat). I should say that the entire of the two fifths of the country would prefer the French language, and a very large proportion of the three fifths of the town.

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5986. Mr. *De Havilland.* I think, all the part of the Island which may be called the country, namely, nine parishes and a part of the tenth, are much more interested in the welfare of the Island than are a large portion of the town, for this simple reason, that almost all their property is reality: whereas, not only is a large portion of the town's people strangers, but another portion has scarcely any thing else but personalty.

5987. (To Mr. *De Havilland.*) Probably many residents in the town are strangers or sojourners; whereas the country people are residents on the land and farmers?—Yes; and their interest in the soil I take to be greater than those whose only property is personal.

5988. The *Bailiff.* I do not know whether it may be a part of the Commissioners' plan, hereafter, to divide the duties of the Bailiff. In case any such plan should be suggested, as, for instance, that it should be the business of the Bailiff to preside at the trial, and the business of the Lieutenant Bailiff to preside at the commital in the Court of Police, I would recommend that it should be stated in this way; that the Court should be presided over either by the Bailiff or his Lieutenant, provided whichever of them presided at the committal, should not preside at the trial. There are some advantages in that over dividing it permanently. It would often be a matter of convenience in a variety of ways, that one should have the opportunity of presiding in the other's Court.

5989. Mr. *Carré.* As Lieutenant Bailiff, I am of the same opinion.

5990. The *Bailiff.* Occasionally, the Bailiff leaves the Island. It would be very right, then, that he should sit occasionally in the Police Court, in order that the Lieutenant Bailiff should be qualified to preside at trials.

5991. Mr. *De Courcy.* I would suggest to the Commissioners, in case of the establishment of a Police Court, to put it on exactly the same footing as a Police magistrate is put in England. The expense would be greatly lessened. I believe that persons cannot now approach the Police Court, on the ground of the expense; they are deterred from coming on the ground of the uncertainty of their cases being disposed of. They sit seldom.

5992. The *Bailiff.* That is perfectly incorrect. The Police Court sits every Thursday throughout the year. In the course I propose, cases would be brought before the Police Court which now come before the regular Court at present, and embarrass the proceedings of the Court very much.

5993. (To the *Contrôle.*) With respect to frauds upon the Bankrupt Laws: have you an actual Bankrupt Law here?—The Commissioners, who came here in 1815, made some regulations on the subject, which are embodied in different Orders in Council. It is not a complete Bankrupt Law, certainly. The regulations contained in those Orders in Council are with respect to the Bankrupt Law.

5994. (To the *Bailiff.*) Is there any Insolvent Law as distinct from the Bankrupt Law?—No; it is more in the nature of a Cessio Bonorum.

5995. You have no distinct systems here, have you, one for those who are traders, and another for those who are not traders?

5996. The *Contrôle.* No. There is "*Renonciation*" and "*Cessio,*" both. The difference between them is this; that cessio merely frees a man till he acquires new property, and renonciation frees him for ever.

5997. The *Bailiff.* The renonciation is a voluntary act; and you cannot be driven to it by committing an act of bankruptcy.

5998. Some cases must occasionally occur of fraud upon the creditors?

5999. The *Contrôle.* There are precedents. And the Order in Council of the 20th December, 1825, empowers the full Court to condemn a fraudulent debtor to an imprisonment for a period not beyond two years. That is not strictly speaking a criminal proceeding at all. It is a proceeding in this form. A man claims the benefit of a cession, having been imprisoned; the creditors oppose that; and, upon their proving acts of fraud, the Court withholds the discharge to a certain time.

6000. But it is incumbent upon them to discharge at the end of the two years?—Yes.

6001. Will you look at Terrien, page 491, lib. xii., c. xxi., *Des banqueroutiers,* and at the Approbation on the same chapter. Is that approved or disapproved?—There is the word "nihil;" which means that we do not make use of this law.

6002. The law of Terrien therefore does not apply?—No.

6003. Have you any criminal proceedings for frauds of that sort?—Yes; we have this proceeding. Every person, applying either for the benefit of cession or renonciation, is obliged to deliver in a general schedule containing a list of his debts, both due to him and from him, and of all the property he may possess. After that, he takes an oath, before the Bailiff and two Jurats, that the contents of that schedule are true. In case of their not being true, he is liable to a prosecution for perjury thereon. But, in the case of his having withheld or concealed any of his property, or made away with it in any way, there is a prosecution in the nature of a fraud. There are precedents for it. There is one case, since I have been at the Bar, which I defended myself; the case of a man of the name of Ferrell, in the year 1843; he was acquitted. The last condemnation took place on the 4th of December, 1841, the case of Bailey. I believe, in that case, he had been admitted and had completed his renonciation, and it was after that, that this property was discovered. The following is the first count in the acte d'accusation.

*The same was read as follows.*

6004. Sur l'action des officiers de la Reine contre James Bailey, fils de Jean, de la paroisse de St. Pierre Port, prisonnier dans la prison publique, à soutenir leur preuve en la cause qu'ils ont contre lui à se voir adjuger à telle peine, punition ou châtiment corporel que la Cour trouvera condigne, pour avoir, le dit Bailey, le 8e Août, 1840, ou environ, étant dépourvu de la crainte de Dieu, dans la ville et

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paroisse de S$^{t}$. Pierre Port, commis le crime de parjure ; le dit Bailey, qui avait demandé d'être admis à renoncer à tous biens meubles et héritages aux fins d'acte de la Cour Royale, du 1 Août, 1840, sur la cause mise contre lui par le S$^{r}$ Thomas Lihonu le dit Bailey ayant devant Justice, dans la dite paroisse de S$^{t}$ Pierre Port, le dit jour, 8$^{e}$ Août, 1840, ou environ, méchamment et frauduleusement et dans le dessein de nuire et de frauder ses créanciers, déclaré par serment que l'inventaire, livré par lui en présence de Thomas Le Retilley, Ecuyer, Juré, commis de la Cour, le 7$^{e}$ Août, 1840, de ses biens, meubles, effets et marchandises, ainsi que de ses dettes actives et passives, était du meilleur de sa connaisance un état fidelle de tout ce qu'il possédait; et ce, quoique, lorsque le dit Bailey fit le dit serment, il savoit avoir caché et célé une grande partie de ses dits biens, meubles et effets et marchandises dans une maison et jardin lors occupés par Timothée Clinch, Ec$^{r}$, et situés à Vauvert, en la dite paroisse de S$^{t}$ Pierre Port, où les dits biens, meubles, effets et marchandises ont été dernièrement saisis.

6005. The *Contrôle.* There is a proceeding, somewhat analogous to that, in cases where persons, after an arrest made upon their property, have removed the effects arrested by the Sheriff. They are liable to a criminal proceeding upon it.

6006. Is that in the nature of a fraud too?—Yes.

6007. Are you speaking now of seizures under the law of renonciation?—No; general seizures under the law of arrest. Property is liable to arrest here before any process has taken place. If you have a claim against a person, you may begin your proceeding by arresting his property.

6008. What is the punishment in the case you mention?—Imprisonment with bread and water.

6009. For what length of time?—Two or three months.

6010. There is no specific limit?—No.

6011. The *Bailiff.* The frame of the accusation, in all these cases, limits the amount of punishment.

6012. (To the *Contrôle.*) We presume there is no written origin of this law. The offence is punished by your common law is not it?—Yes. I apprehend the way to state the punishment would be, to say that it might be up to seven years' banishment.

6013. There is no Order in Council, nor Ordonnance for the punishment, nor anything, except what has been called the common law?—That is all.

6014. The *Contrôle.* There is a class of cases, in which persons have been tried for having concealed property in the Island, so as to get it carried out of the Island before the Sheriff could arrest it; and they have been indicted for that, although there had been no legal proceedings taken against them. The latest proceeding of that kind is in the month of April, 1837. The man was condemned to two months' imprisonment, one solitary on bread and water, and three years' banishment. The indictment is in the following form.

*The same was read as follows.*

6015. " Sur l'action des officiers du Roi contre Elie Way, fils de Joseph, de Tolpuddle, dans le Comté de Dorset, en Angleterre, prisonnier dans la prison publique, à soutenir leur preuve en la cause qu'ils ont contre lui, à se voir adjuger à telle peine, punition ou châtiment corporel que la cour trouvera condigne, pour avoir, le dit Way, soit seul ou avec autre son complice ou autres ses complices, depuis le 1$^{er}$ Mars au 3$^{e}$ Avril, 1837 ou environ, dans la paroisse de St. Pierre Port, frauduleusement porté ou fait porter, caché ou fait cacher, dans une maison appartenant aux Etats, et située à la rue de la Fontaine, occupée en tout ou partie par Thomas Prowse, dix grandes jarres ou bouteilles de terre remplies de liqueurs spiritueuses, trois douzaines ou environ de bouteilles de vin et de cordiaux, des quilles, un panier contenant assiettes, couteaux et fourchettes, et une poche contenant des outils à cordonnier, le tout appartenant au dit Way, et ce à dessein de frauder et voler ses créanciers; le dit Way lequel était cordonnier et gardait cabaret à la rue du Parcq, devant de l'argent à Jean Valrent, Ecuyer, à Monsieur Pierre De La Mère, au Sr. Victor Benoist, et à autres ses créanciers : Item, avoir le dit Way, dans le dit tems et dans les dits lieux, soit seul ou avec autre son complice ou autres ses complices, frauduleusement obtenu de la toile du Sieur Jean Carrol, et avoir, sous de faux prétextes ou dans le dessein prémédité de frauder ses créanciers, obtenu une quantité de cuirs du Sr. Victor Benoist, et les dites liqueurs spiritueuses, le dit vin et les dits souliers, portés dans l'accusation ci-dessus, de divers particuliers, notamment des dits Monsr. Valrent, Pierre De La Mère, Victor Benoist, Jean Carrol ou de quelques uns d'iceux, et avoir été empêché de compléter le transport des dites marchandizes ou de quelques unes d'icelles hors de cette Ile par des circonstances indépendantes de la volonté du dit Way."

6016. Is this also an offence by the Common Law?—Yes; I was wrong in saying that there is no written law to punish a party who removes his goods fraudulently after they are arrested. There is a law with respect to the removal of property attached by process from the Court, which you will find in Terrien, lib. xi., chap. i., p. 405.

*The passage was read as follows.*

6017. " L'en doit sauoir que s'aucun a gaigné par jugement la saisine d'aucune chose contre un autre, et cil qui l'a perduë y met puis la main, il doit estre justicé par corps et par biens, tant qu'il ait restoré l'autre de tous les dommages qu'il a eus par luy, et qu'il ait amendé à la Cour, autrement despeceroit on chacun jour ce qui seroit fait et jugé en Cour. Car tout ce qui est jugé en Cour doit estre gardé sans contredict, jusques à tant qu'il soit rappelé par plus solonnel jugement. Pareillement, quand aucun met la main à la chose qui est arrestée ou prinse en la main de Justice, deuant que la querelle soit finée, le corps de luy doit estre mis en prison et retenu jusques à tant qu'il l'ait amendé, et rendu ce qui a esté empiré par son meffait."

6018. The *Contrôle.* That is strictly a proceeding in the case of persons removing property under arrest: and that is very analogous to the form of proceeding now.

6019. Is the precedent which you have given us a strictly criminal proceeding?—Yes. The first applied to bankruptcy, and the latter to fraudulent removal, without the Sheriff having been there at all. In the case of the Sheriff having possession of the property, and the person

removing it, the usual form is for the Sheriff to produce the person before the Cour Ordinaire, and for the case to be dealt with summarily.

6020. That is to say, it is an application by the Sheriff to the Court to vindicate his authority over the goods?—Yes.

6021. Suppose a case tried by seven Jurats, with three Chefs d'accusation; and that six of them thought the prisoner guilty, but on different counts; two for each of the three counts. What would be the result?—It is difficult to give any opinion upon that, because the opinion of the Court would be taken at the same time upon the whole accusation. In the way the case is put, there would be an embarrassment. Technically, the prisoner would be amerci: a conviction would take place.

6022. The *Bailiff*. Suppose there are a dozen chefs d'accusation. Some of the Jurats may think he is guilty of count two or three, others may think he is guilty of count four or five, or six. That is not so material; because those who find him guilty of the smaller offence will award the less punishment. So that, in all probability, the punishment will be according to the opinion of the majority.

6023. (To the *Contrôle*.) When you prosecute criminally for fraudulent removal to avoid seizure, do you allege a debt?—Yes.

6024. Are you bound to prove that?—I presume so. I was not at the bar when those proceedings were entered. I found them from the indexes; and they always appeared to me rather curious ones. I do not know what the proof brought forward by the Crown was.

6025. Probably the creditors in Way's case came to the bar and declared upon oath that Way owed them money?—Yes.

6026. Would it be sufficient to prove a debt to somebody, or must A, B, and C, prove their separate debts?—I should say that some of the debts mentioned must be proved; and other cases would be added for the purpose of showing the intention.

6027. There was a case at which the Commissioners were present, in which a man was brought up for appropriating a purse. The whole of the circumstances were stated in the accusation. Must they be proved exactly as they are laid? Would a mistake, for instance, in the proof of the property be fatal to the charge?—I conceive so. If the evidence is very clear, it is usual to allege everything specifically. If there should be any doubt upon the evidence, it would be laid a little more vaguely. For instance, with regard to time, when we are quite sure of the day, we allege the day; if we were not sure of the day, we should allege the whole month. There is one instance which I could put specifically to the Commissioners. It might be laid "d'avoir *depuis* le de Septembre, au d'Octobre."

6028. But you are bound by your statement?—Yes. I am not quite clear whether the property could be laid as the property of a person unknown; but, if it be laid that it belongs to a person, you are bound to prove who that person is.

6029. The second count in Way's case, for example, is very special indeed. It alleges the false pretences, and also the intent to carry the goods out of the Island. Suppose you proved the false pretence only, and not an intent to take them out of the Island?—I should say that that count would fail. I should say that, having laid in the same count that they were obtained with a fraudulent design of appropriating them and also with the design of carrying them out of the Island, you must prove both. Had there been any doubt upon that, the duty of the Crown officers would have been to have laid them in different counts.

6030. Most of your actes d'accusation are concise statements of the facts against the prisoner?—They are.

6031. It therefore becomes important to know how far the party accusing is tied to proof of the particular facts he alleges?—I conceive he is tied to the particular facts.

6032. The *Bailiff*. The accusation would be good if put at large; but it is proper to give the prisoner as much information as you can, when you consider that the mise en accusation is the only information he gets of the nature of the charge against him. It also saves us from defining the crime, to state the particular facts.

6033. The *Contrôle*. I could give the Commissioners some very strong cases, in which the prisoner, under such circumstances, was acquitted. There was one case, in which a man was indicted for ill treating his wife; her name was laid as "*Mary Blatchford*," and on the trial it was proved to be "*Eliza*;" he was acquitted.

6034. (To the *Contrôle*.) Suppose a man were indicted for having given his wife certain kicks; and it were proved, on the trial, that the ill treatment was by blows. Would that be fatal to the charge?—I conceive so. If there were any doubts as to how the ill treatment had been caused, it would have been laid, by a kick, *or* a stick, *or* with a knife, and so on, leaving it doubtful.

6035. Suppose you were to charge obtaining goods under false pretences. Would you allege it, in the same way as it is there, "*d'avoir frauduleusement obtenu sous de faux prétextes*;" or would you lay it "*d'avoir frauduleusement approprié*?"—I should say you would put in both. You would say "Having fraudulently appropriated goods which he had obtained by false pretences."

6036. Are the technical words "*fraudulently appropriating*," or "*obtaining by false pretexts*?"—I conceive the form would be as I have stated. In the year 1833, on the 11th of May, John Mew was indicted for having "soit seul ou avec autre son complice, ou autres ses complices, soit d'aubord du navire Danois, le Jupiter, ou dans ou proche la Baie des Corbelets en l'Ile d'Auregny, pris, volé ou s'être furtivement emposséde d'un ballot, contenant des schalls on mouchoirs de soie, faisant partie de la cargaison du dit navire Danois, le Jupiter, dont le Sieur F. W. Lofgrew étoit maître." It was not alleged there to whom they belonged.

6037. In mentioning the case of a false pretence, in which it would be laid both ways,

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what is the punishment?—The accusation would run "*à telle peine punition ou châtiment corporel, que la Cour trouvera condigne.*"

6038. Is the obtaining money or goods under false pretences also made a crime, and punished under the general jurisdiction of the Court, and not by any particular law or enactment?—Exactly so.

6039. Have you a distinct head of offence corresponding to the English crime of Burglary?—No: but, in the case of a robbery committed in a dwelling-house, and at night, and of there being a breaking, all those facts would be laid specially in the acte d'accusation, and would be an aggravation of the offence.

6040. It would be vol avec effraction nuitamment?—Yes.

6041. Supposing no theft is committed; that a person breaks into a house by night and does not steal?—It would be the attempt to commit the crime, which he would be indicted for.

6042. Is it a specific offence the breaking into a house in the night time with intent to commit a felony?—Yes; but I conceive it would be necessary for the Crown to allege and to prove that there had been some hindrance in the committal of that crime. If not, it might be indicted as an act of brigandage.

6043. Supposing the person is charged with breaking into a dwelling-house in the night with intent to commit a felony?—That would be a perfectly indictable offence; but we should be bound to add to that, that the committing of the felony had been prevented by circumstances independent of the will of the prisoner. I conceive that that would form an essential part of the indictment.

6044. If he broke into the house in the night, intending to commit a felony, but, having broken in, a sudden compunction came over his mind, and he walked out of the house; would he be convicted of the crime?—No; not in that shape. In that case we might indict for malicious mischief.

6045. What would be the punishment for an offence of that kind?—I conceive that an offence of that kind would be indicted au Grand Criminel, as the complete offence would have been.

6046. Is that punishable under the general jurisdiction of the Court, or by some law in Terrien?—Under the general jurisdiction of the Court. It might probably come under the head that was mentioned yesterday. I believe there is nothing very specific with respect to attempts in any part of Terrien.

6047. In the case of "vol," you add "nuitamment" and "avec effraction," purely as aggravations?—Yes.

6048*a*. Without adding those circumstances in the acte d'accusation, can you prove them?—You may prove them; but, if you do not add them in the acte d'accusation, the trial would be au Criminel Ordinaire, and not au Grand Criminel.

6048*b*. Can you try au Grand Criminel without laying the offence félonieusement?—You would lay an offence of that kind félonieusement.

6049. Could you lay a simple vol félonieusement?—Not without the circumstances.

6050. Not without showing how the felonious character was imparted to it?—No.

6051. What is the law with regard to arson in this country?—That is charged félonieusement also.

6052. Is there any law in Terrien relative to Arson?—I am not aware, at this moment, that there is. There are precedents. It would be tried au Grand Criminel.

6053. Arson, perhaps, would be the burning of houses. Have you any law as to the malicious burning of stacks and crops?—I believe not.

6054. In the case of the malicious setting fire to a barn; would that be laid félonieusement?—I conceive so. There was a case of Arson about ten or twelve years ago which was laid félonieusement.

6055. So with ships the same?—Yes; I am not aware of any precedent for ships.

6056. Your opinion is that such cases ought all to be laid félonieusement?—I conceive so.

6057. Mr. *Le Retilley*. There was a case of burning a stack some eleven years ago. There was an inquiry made; but there was not sufficient proof to indict the person.

6058. (To the *Contrôle*.) Do you recollect the circumstances of McCrea's case?—His was a case of Arson. A dwelling-house was burnt; but he was acquitted.

6059. The *Bailiff*. "Les Ardeurs" are mentioned in the Coustumier, chap. iv. De Justicier. Also in Terrien, Lib. III. chap. v. p. 59, this passage from the Coustumier is cited. This refers to persons guilty of arson. A custom or law in Normandy, which may not have been inserted in Terrien, and so may not have come down to us there, may still be law in this Island. There are other things which are matter of common law here. In the Placita de Quo Warranto Insulæ de Gerneseye et Jereseye, there is the following entry. Coïtas hujus Insulæ allocuta quâ lege utuntur et per quam legem clamant deduci, an videlicet per legem Angliæ vel Normannorum aut per speciales consuetudines eis per Reges concessas, &c., dicunt quòd nec per legem Angliæ nec Normannorum sed per certas consuetudines in hâc insulâ usitatas à tempore quo memoria non existit. *Placita de Quo Warranto, Ed. II. p.* 825. I think it would be beyond our power to make any Ordonnance altering custom which stands upon the footing of a law.

6060. (To the *Bailiff*.) Suppose the Court, acting judicially, to say that, setting fire to a stack was felony. That, the Commissioners understand, would be within the scope of their authority?—Yes.

6061. Suppose them to have decided that such firing was not felony. Would they have any power to make an Ordonnance creating it a felony?—No; I do not apprehend that any Ordonnance would give the power of inflicting more than a fine, or perhaps imprisonment.

6062. The *Contrôle*. Not imprisonment, except in default of the payment of the fine.

6063. (To the *Bailiff.*) Do you think you could make an Ordonnance fining a man to a certain amount for firing a stack?—Yes; by making it a mere matter of police.

6064. Would that limit it to cases which may be tried by the Cour du Quartier?—Not quite; it would be either a matter for the Cour du Quartier, or an action for penalties.

6065. The *Contrôle.* The jurisdiction of the Cour Ordinaire, in matters of fines, is confined to cases under thirty livres Tournois. All other cases of penalties must be tried before the full Court by a penal action.

6066. The *Bailiff.* I do not think it is very clear where the line as to the power of the Court is to be drawn. In the case of Tupper against the Treasurers of the Hospital, the validity of certain Ordinances, which were in question before the Privy Council, was recognized. It was admitted that every thing could not be done by Ordonnance; but the Court said it would be difficult to draw the line. I think that we should probably feel the difficulty as much as the Privy Council.

6067. Mr. *MacCulloch.* In the third chapter of the first Book of Terrien, there is a quotation in which the different kinds of law are distinguished. In the 12th page you will find: "Aussi à l'opposite, la coustume de nouueau introduite abat l'ordonnance contraire precedentement faite. Pareillement une coustume est abroguée par non usance ou coustume contraire de nouueau introduite." That is a principle which has been universally recognized in Guernsey; whether properly or improperly I will not say; but that is the fact.

6068. The *Bailiff.* It is like a general custom, which sixty years suffices for. In the same case of Tupper against the Treasurers of the Hospital, it was thrown out by Mr. Baron Parke whether forty years did or not create a custom.

6069. (To Mr. *MacCulloch.*) Against this chapter in the Approbation there is written "*nihil,*" as one of the chapters not approved?—That is not exactly right. There is a general approbation which embraces the whole book. The Approbation des Loix certainly does not recognize this chapter; but it says: "Au lieu *du premier livre,* qui traite de la Justice et du droit des Normands, nous avons accoustumé d'user suivant le Livre appelé l'Etente du Roy, et Précepte de l'Assise, lesquels doivent estre en cette Isle, gardée et observée inviolablement, tant pour l'Election Estat, et direction des Justiciers et autres Officiers de Sa Majesté que aussi pour les Droits, Rentes, Revenus, Services, Hommages et Suittes de Court appartenants et dûës à Sa Majesté en cette dite Isle de Guernezey." It does not reject it; but says we have other things instead.

6070. Your construction is that it is not a substitution of the Extent of the King and the Precept of Assize for the first Book, but that it is the first book of Terrien in addition to them?—Not exactly that. I consider that it is the first Book, except where the contrary is ruled by the Précepte d'Assise and the Extent. We have always admitted the general principles laid down here.

6071. The *Contrôle.* In Terrien, Lib. iii, chap. v, page 60, you will see, in the note to *Malfaiteurs,* "De l'Office du Bailly sur le faict des crimes sera escrit cy-après par un traicté à part," referring to Book xii. Then, if you go to page 463, Lib. xii, chap. ii., "*De l'Office des Baillis et Vicontes sur le faict des Crimes,*" which chapter is approved, Terrien says, citing La Coustume: "Le Bailly est appelé Justicier du pays, qui est estably par le Prince pour garder la paix, pour terminer les querelles, pour destruire les larrons, les homicides, *les ardeurs* et autres malfaiteurs."

6072. The way in which you get at the law of arson is, that you find its existence assumed in defining the jurisdiction of the Bailly?—Yes.

6073. With regard to the malicious destruction of goods, what is the mode of dealing with an offence of that sort?—It is malicious injury to property, and goes under the head of brigandage.

6074. Destruction of sea walls, or bridges, or goods belonging to any individual, would all come under the definition of brigandage probably?—Yes.

6075. How are they punishable?—The accusation would run à telle peine, punition, ou amende, que la Cour trouvera condigne.

6076. Not à châtiment corporel?—Not usually. There are cases in which they are indicted à châtiment corporel; but the usual way is to indict à telle peine, punition, ou amende.

6077. In those actes what is the form of accusation? D'avoir commis le fait de brigandage?—D'avoir commis divers brigandages, *sçavoir,* &c., and then going on specifying each distinct act.

6078. Those cases might be tried summarily, or sent before the Cour Ordinaire, according to the gravity of the offence?—Certainly; that applies to all cases generally.

6079. Mr. *Andros.* With respect to the destruction of high trees, timber trees, there is a specific law.

6080. The *Contrôle.* Terrien, Lib. xiv, treats, "Des Eaux et Forests;" the Approbation says, "Pour les Eaux et Estangs contenus au quatorziesme livre il y a ordre posé par les Chefs-Plaids."

6081. How is it with regard to vol? Can it be committed upon a growing plant? For nstance, suppose a person pulled up a young tree and took it away with him, would that be vol?—Yes. There are precedents for that.

6082. The learned Advocates at Jersey differed upon that point.—I think there is no doubt upon that point here.

6083. Suppose you take a chattel away for the purpose of destroying it: where do you draw your line there?—I should think that would be in the nature of a malicious injury to property.

6084. The *Bailiff.* If you were to take a horse and throw it over a precipice, I think it would be an act of malicious mischief.

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6085. Would the malicious killing of another person's horse or cow be an act of brigandage also?—I conceive so.

6086. And punished either by the exercise of summary jurisdiction, or be sent before the Cour Royale for peine, punition, ou châtiment corporel?—Exactly so.

6087. The *Procureur.* In the year 1842, February the 9th, a man was tried for having taken a piece of wood, which answered the purpose of a gate. He took it to a distance, and broke it to pieces; he was tried for brigandage.

6088. (To the *Contrôle.*) Is the exhibiting of false signals to allure ships in distress an offence?—I conceive it would be treated as an offence. I am not aware of any precedent for it. I should suppose it would be dealt with as a malicious mischief.

6089. There is no particular law which applies to such a case as that?—Not that I am aware of.

6090. Would you charge the particular act which the person had done?—Yes; you would specify the act.

6091. Would it be called an act of brigandage?—I should suppose it would be laid: "Having maliciously exhibited false signals with the intent of destroying certain vessels."

6192. Would it be laid félonieusement?—I conceive, supposing it were done in such a way as to endanger the lives of the persons in the vessel, it would be certainly laid félonieusement.

6093. Would that be so treated in the exercise of the general criminal jurisdiction of the Court?—Yes. There may be some old cases which would guide the Court in their discretion.

6094. Would the same doctrine apply to cutting away buoys?—There is an Ordonnance upon that subject of January, 1846, the 3rd article of which provides for it.

6095. Could that be punished in any other way?—I conceive that would not prevent the Court from authorizing a prosecution. There is an Ordonnance of the year 1840, "Pour les chemins," which provides a fine in the case of windows being broken. In the course of this year, two persons were indicted for having, during the night, thrown stones at the windows of dwelling-houses. Their counsel pleaded that it was provided for by the Ordonnance; but the Court set the objection aside.

6096. And punished the parties under the exercise of their general criminal authority?—Yes.

6097. The same rule, of course, would apply to the case which has been mentioned?—I conceive so.

6098. The crime of Forgery appears to be provided for by Terrien. Lib. xii., chapter xviii. —Yes. There is also a passage which was before the Commissioners the other day, about "L'inscription de faux," Terrien, lib. xii., chapter xxviii, at p. 504:—"L'information faite est rapportée; et si par icelle les faicts contenus esdits moyens semblent prouvez et verifiez, le Notaire et la partie et autres coulpables de la fausseté, sont adjournez à comparoir en personne, ou prins au corps, à la discretion de la Court. Et s'ils comparent, sont enquis, examinez et interroguez. Et s'ils n'alleguent faicts et raisons probables et apparens pour soustenir la pièce veritable, est procédé extraordinairement et, le procez parfait, la fausseté déclarée."

6099. Does not the 18th chapter apply solely to forging contracts, or other instruments, passed before a notary?—It does, strictly so.

6100. What you have just read from the 28th chapter, appears to be the mode of proceeding when any one alleges that an instrument produced in a civil cause is a forgery?—Yes.

6101. And in general terms would extend probably to any instrument?—Yes.

6102. Do indictments for forging a bill of exchange exist?—Yes.

6103. What is the technical form of charging the crime?—D'avoir commis le crime de faux; and the instrument must be always set out.

6104. What is the punishment for Forgery? Is that an offence laid félonieusement?—Yes. There are modern cases in which it has been treated both ways; but it is generally laid félonieusement.

6105. Is there any distinction as to forging a deed or will?—No.

6106. You would allege still that the party had "Commis le crime de faux, sçavoir, &c."—Yes.

6107. The passage of Terrien, to which you have referred, does not enter into the punishment, does it?—No.

6108. The Ordonnance of Francis I., in the 18th chapter of Terrien, makes the punishment for making false contracts and deeds, capital. The Approbation says, "Les forgeurs et faiseurs de faux contracts, les faux tesmoins et les suborneurs sont punis à la discretion de Justice de mesme selon l'exigence du fait?"—Yes.

6109. Does the crime de faux extend to the false making of every instrument? Or must it be the forging of some instrument which, upon the face of it, is a commercial instrument, or a will, deed, or contract, or other instrument, which the party, affected by the crime, has some pecuniary interest in?—I conceive it must.

6110. A receipt for money would, of course, be included?—Yes; I conceive there must be some pecuniary interest involved in it.

6111. Must it always be the having forged with an intention to defraud a person?—Yes.

6112. Is the uttering a forged bill of exchange or note, knowing it to be forged, a specific crime?—Yes. And the practice is, unless there is some positive evidence of the forgery having been committed by the person charged, to indict for having forged, or for having uttered the instrument knowing it to be forged.

6113. Your answer would involve that both of those charges would be félonieusement?—Yes.

6114. The uttering would be supposed to be implied in the law of forgery, or else punishable in the exercise of the general criminal jurisdiction of the Court?—Yes.

6115. The French law takes a distinction between two sorts of forgery: one, the absolute fabrication of an instrument; and the other, the alteration of a valid instrument for the purposes of fraud. Is any such distinction taken here?—No.

6116. The alteration of a five-pound note into a fifty would be a forgery as much as the fabrication of a fifty-pound note?—Yes. The very last case of forgery which was tried was for altering the amount.

6117. The punishment of the pillory was inflicted for forgery, was not it?—Yes.

6118. That punishment now is almost obsolete, is not it?—Entirely so. It has not been inflicted for the last twenty five or thirty years. A person was put in the cage as late as 1841.

6119. What is that punishment?—Putting the prisoner in a cage in the market-place on Saturday.

6120. The law used to be, when the punishment of the pillory was inflicted in England, that people might throw filth and dirt at the person exposed, provided it was nothing that could inflict an absolute wound. We take for granted that the exposure in the cage did not include anything of that kind?—Not always; it did sometimes. In the case I have referred to there was imprisonment also.

6121. Is the punishment of exposure in the cage applicable to other crimes besides forgery?—Yes; for domestic robbery.

6122. Mr. *De Courcy*. I heard it threatened by the Bench, to a person of the name of Kennedy, for breaking windows, if it occurred again. In the case of Farrell, who forged Mr. Mansell's name for fifty pounds, the punishment inflicted upon him was banishment.

6123. The *Contrôle*. Farrell was indicted au Grand Criminel. He was condemned to two months' imprisonment, one month of which was on bread and water, and six years' banishment. The punishment of banishment was severe in that case, because he had a wife and several children. He possessed property in the Island, and had been resident here a considerable time.

6124. Have you any specific punishment for the offence of Personation?—No.

6125. You would treat it as a common fraud probably?—Yes.

6126. What is the technical mode of charging Murder?—There is a special form, which is made use of in that Indictment, "*étant dépourvu de la crainte de Dieu,*" and then it goes on "*tué, occis, et meurtri.*"

6127. In this Island, what is the definition of murder?—The English authorities are cited in cases of that kind.

6128. That would be killing with malice aforethought?—Yes; we should follow precisely the English doctrine. There is a special Order in Council for those cases.

6129. In the old Norman law, every violent killing of a man was murder?—Yes. There are three Orders in Council, of the dates of March 25th, 1697, June 23rd, 1698, and November the 30th, 1699, which authorize the Court, on an Indictment for murder, to give a verdict of homicide, and to condemn to a lesser punishment than death.

*The same were delivered in, and are as follows.*

6130. "Order in Council, registered 5th May, 1697; Order produced, dated 25th March, 1697.

"His Majesty in Council taking notice that, in the application forHis Majesty's pardon by petition from persons convicted upon trials in the Royal Court of Guernsey for murder, manslaughter, or chance medley, the methods prescribed by His Majesty's Order in Council of 13th of March, 1689, had not been duly observed: It is this day ordered by His Majesty in Council, as it is hereby ordered, that upon trials of persons in the Royal Court of Guernsey for murder, manslaughter, or chance medley, where by good evidence it shall appear that there was no premeditated malice, and that the offender is a fit object of His Majesty's mercy, the Judge of the said Court do thereupon forbear to give judgment and suspend all further proceedings against such offender, until, upon certifying to this Board a true state of the case, with all the circumstances of the fact as they shall appear upon oath, His Majesty's pleasure shall be signified concerning the said offender, whereof the Bailiff and Jurat of the Island of Guernsey, and all others, whom it may concern, are to take notice, and to cause this Order to be registered in the Royal Court of the Island.

(Signed) Wm. Blathwayt."

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6131. "Order in Council, registered 10 Dec. 1698, produced; dated 23rd June, 1698.

"His Majesty was this day pleased in Council, for the better explanation of the Order of this Board of the 25th March, 1697, concerning trials of murder, manslaughter or chance medley in the Royal Court of the Island of Guernsey, to declare and order that all persons, accused of any of the crimes above mentioned shall be forthwith according to law tried and have sentence passed upon them; but the execution thereof should be respited, if it should appear upon the trial that there was no premeditated malice, or that the offender is a fit object of His Majesty's mercy, until His Majesty's pleasure should be known thereupon; to which end the Royal Court of this Island is to certify to this Board the true state of every such case, with all the circumstances of the fact, as the same shall be made appear upon oath at the trial. And hereof the Bailiff and Jurats of the said Island of Guernsey, and all others whom it may concern, are to take notice, and to cause this Order to be registered in the Royal Court of the said Island.

(Signed) John Nicholas."

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6132. At the Court at Kensington, the 30th day of Nov., 1699.

Present, The King's Most Excellent Majesty in Council.

"Whereas His Majesty did, by His Order in Council of the 23rd of June, 1698, direct that all persons accused in the Royal Court of Guernsey of murder, manslaughter or chance medley should be

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forthwith" according to law tried and have sentence passed upon them, but the execution thereof should be respited, if it should appear upon the trial that there was no premeditated malice, or that the offender is a fit object of His Majesty's mercy, which was granted upon a representation formerly made to His Majesty, that by the Law of that Island the punishment was capital in all cases where any person was found guilty of the death of a man, and that there was no distinction of punishment, in cases of murder, manslaughter or chance medley; and His Majesty having been since informed that there was some mistake in the representation of that matter, and that, according to the law and ancient usage of that Island, the Bailiff and Jurats, upon the trial of any person accused for the death of another, unless they find the offence to be murder, do not proceed to inflict capital punishment for the same, but do inflict lesser punishments, according to the nature and circumstances of the offence: His Majesty hath therefore thought fit in Council to order, that the said Order of the 23rd of June, 1698, for stay of execution in cases of murder, manslaughter and chance medley, until His Majesty's pleasure should be known, shall be restrained to cases of murder, and other cases where capital punishment is inflicted, where the said Court shall think the offender a fit object of His Majesty's mercy, and no other; to which end the Royal Court of the said Island is in such cases only to certify to this Board the true state of every such case with all the circumstances of the fact, as the same shall be made appear upon oath at the tryall. And hereof the Bailiffs and Jurats of the Island of Guernsey, and all others whom it may concern, are to take notice, and to cause this Order to be registered in the Royal Court of that Island."

6133. Are they counterparts of the Jersey orders?—I believe they are.

6134. With respect to Attempts to murder: how are they laid?—They would be indicted as attempts. And I conceive the same rule would apply that I mentioned with regard to vol avec effraction.

6135. That you must particularize the Attempt?—Yes.

6136. It would be an assault with intent to murder?—Yes; and, of course, in that case, if there were any doubt upon the evidence, the Crown officers would indict for an attempt to commit grievous bodily harm.

6137. Mr. Falla told us that he considered the French law to prevail on that point?—I do not go quite so far as Mr. Falla, in what he said upon that point.

6138. Do you consider Mr. Falla to have overstated the extent to which the French law prevails here, as opposed to the English?—Yes.

6139. (To Mr. *Carré*) What do you say on that subject?—I do not conceive that Mr. Falla meant to say that a crime would be punished according to the rules of the French law; but that it would be considered a crime of the same nature.

6140. He was understood to mean that, when you refer for illustration to the law of another country, he thought you would consider a French illustration better than an English one?—I agree with him in that.

6141. The *Contrôle.* But not the modern French law; that is the difference. The Criminal Ordonnances certainly, but not the modern French law.

6142. The *Bailiff.* I apprehend, when Mr. Falla talked of the French law, he meant the old French law.

6143. Mr. *Falla.* I meant the old French law, in what I said.

6144. (To the *Contrôle.*) In the case of an Assault with intent, is the particular intent, as to cut, wound, or to do grievous bodily harm, specified?—Yes.

6145. What is the punishment for that offence? For instance, for an attempt to murder or to maim?—It would depend upon the particular circumstances of the case.

6146. Would it be alleged félonieusement?—An attempt to commit murder would always be laid félonieusement.

6147. Though no wound were actually inflicted?—Yes.

6148. Suppose you fired at a person and missed him?—I conceive that would be indicted félonieusement. Indictments for attempts to commit grievous bodily harm would more usually run "à telle peine, punition, ou châtiment corporel." In a very serious case, I conceive, the Court would indict félonieusement.

6149. In the case of an attempt to commit a rape, how would it be?—That would be usually also laid "à châtiment corporel." In a case where there were peculiar circumstances of aggravation the Court would indict félonieusement.

6150. The case of an intent to wound a peace officer: is there anything peculiar in that?—No; except that it is considered as an aggravation of the offence, and is more severely visited.

6151. What was the precise form of the charge against Mr. Gallienne on a late occasion?—He was indicted "à telle peine, punition, ou châtiment corporel."

6152. When did that case occur?—In February, 1843.

6153. He wounded some one with a knife, did not he?—

6154. Mr. *Andros.* Yes; he struck with a penknife, and inflicted two wounds, one on the left arm, and the other on the right shoulder. Then there was a second count for having, after he had given the wounds, gone in search of the person whom he struck, saying, he would kill him if he found him. He was told that the person he had struck had gone another way, to divert him; and he ran after him. The Court found him Guilty generally. They made no distinction in the finding.

6155. (To Mr. *Andros.*) Is not a case of actual stabbing ordinarily laid "félonieusement?"—That was not considered such a case.

6156. The *Contrôle.* It would be ordinarily laid félonieusement. It depends upon the particular circumstances.

6157. Do you recollect what were the circumstances which took that case out of the ordinary rule?

6158. Mr. *Andros.* He went into a room where there were two gentlemen Mr. Corbet and another, and three or four women, and made those stabs with the knife, one upon the shoulder

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and the other upon the arm. They had been drinking together. The house was a sort of house of ill fame.

6159. Mr. *De Havilland.* He drew his knife under the arm; and Mr. Corbet declared upon his oath that he was quite sure the first wound, on the shoulder, was an accident; and he believed the second also to be unintentional. They had dined, and had been drinking together. They were at this house of ill fame; and he picked a quarrel with him. Mr. Corbet declined having anything to do with the prosecution. The Law Officers, before the Court, stated that there could be no prosecution. The Court insisted, as there had been much scandal about it, that the Law Officers should prosecute; and the case was brought forward accordingly.

6160. The *Procureur.* Originally, Mr. Corbet refused to prosecute in any way. And it was proved, I think, if I recollect the circumstances right, that they had been dining together: that, after a while, they went to this house; that there they gave a quantity of what they call sherry punch to this Mr. Gallienne; which was made with sherry wine and the usual quantity of brandy. And, after he was exceedingly drunk, they played at cards; and he supposed that they were taking money from him in an improper way. At the time of the conversation, to which Colonel De Havilland has referred, neither the Constable nor any other person had mentioned it to the Crown Lawyers. On the trial other things came out. And, if I recollect right, the Court condemned him to two months' imprisonment: but the conclusions of the Crown Officers were for three months' imprisonment, or four.

6161. Mr. *De Havilland.* This had gone abroad. It had been talked of; and the Crown Officers were asked, whether they intended to prosecute; and they said No.

6162. (To Colonel *De Havilland.*) Do you recollect what were the particular circumstances of mitigation in that case?—The person wounded had declared that one wound, he was quite sure, was in the scuffle in falling down; and that, as to the other, he did not believe that the prisoner had any intention to hurt him; that he was in a state of great inebriation and excitement.

6163. The *Procureur.* There is another circumstance, which was that there was a young person with Mr. Gallienne. He was drunk; and this person was then supposed, and is now known, to be his wife. It was not known then.

6164. Mr. *De Havilland.* That person was then playing at cards with Mr. Corbet; that led to some dispute between them. It was more an affray than anything else.

6165. (To Colonel *De Havilland.*) Did it come out au secret, before the acte d'accusation was framed, that there had been this attempt to pursue Mr. Corbet after the wound had been given?—Yes.

6166. Mr. Gallienne had no connection on the Bench, had he?—None whatever; neither by alliance or otherwise.

6167. He was an Advocate, was not he, at that time?—Yes.

6168. This was a case, the Commissioners understand, which had escaped the vigilance of the Police; and had indirectly come to the knowledge of the Court?—Yes; it was a case that was much talked of abroad.

6169. It had not come to the knowledge of the Court through the Constables?—No; the Procureur stated that he had no knowledge of it brought to him.

6170. Do you know how it happened that the Constables did not bring it forward?—No, do not: I believe it was that Mr. Corbet, when he was spoken to, wished to avoid any complaint whatever.

6171. Supposing a breach of the peace is committed, and the party injured wishes not to bring it forward, is it considered within the discretion of the Constable to abstain? Take the case of theft, for instance.

6172. I should think not.

6173. The *Contrôle.* Certainly not.

6174. (To Mr. *De Havilland.*) In this case the Court thought that the Constable had acted very improperly; did not they?—I do not recollect that it was particularly mentioned.

6175. It was not a case which the Constable had been ignorant of; was it?—No.

6176. Mr. *Le Retilley.* It was thought a trifling assault, at the commencement. But the accident was found much more serious on the following day; in fact Mr. Corbet's life was in danger. That created a great sensation in the public mind; and the Court ordered it to be brought forward.

6177. When was the prosecution ordered?—I think the second or third day; I am not positive.

6178. Mr. *H. Dobrée* (Jurat). I believe, Mr. Gallienne was constitué prisonnier almost immediately, provisoirement, till the result of the wound was finally known. When Mr. Corbet was sufficiently recovered (which took perhaps a week or so) to come before the Court and give his evidence in the presence of the Court and the Crown Officers, he did there what he had already done to the Constables, he exerted himself in every possible manner to avoid the prosecution being gone into. He stated to the Court, in the strongest terms, that he and Mr. Gallienne were intimate friends; that he was convinced that he could have had no intention of doing him any harm; that the wound was received in consequence of a fall; that Mr. Gallienne was exceedingly intoxicated at the time; that he was under a more violent state of excitement than drunken men generally are; and his conviction was that he meant to do him no possible harm. He used every possible influence, and said he would leave the Island to avoid giving evidence. But the case had become so public that the Court determined to bring the matter to trial.

6179. Was that the only case against this gentleman?—The *Contrôle.* At that time. He has been since brought before the Police Court once. It was supposed to be a case of stabbing: but the Court were satisfied it did not amount to that; and he was condemned to a slight imprisonment.

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6180. The *Bailiff*. He was intoxicated; and one of the men with whom he came in contact thought he made a blow at him with a knife; but it was proved affirmatively that he had no knife.

6181. The *Contrôle*. In consequence, the Acte does not mention anything about the knife at all.

6182. What was the sentence upon Gallienne?—The first sentence was two months' imprisonment; the sentence in this second case was a week's imprisonment.

6183. Mr. *Andros*. A representation was made in that case by General Napier to Sir James Graham; and Sir James Graham wrote a letter, desiring the Court here to suspend Mr. Gallienne from being an Advocate. The offence mentioned in the letter was for stabbing and wounding. The Court had always intended to suspend Mr. Gallienne; and, upon the receipt of this letter, they immediately did so. General Napier made a subsequent representation to Sir James Graham; and in the letter of Mr. Manners Sutton, intimating that Sir James Graham did not think a suspension of one year sufficient, the offence is characterised as "stabbing and wounding with intent to kill." In a Militia Order issued afterwards by General Napier, he dismissed Mr. Gallienne for stabbing and wounding his companion with a knife.

6184. The *Procureur*. The man, I should state, committed the offence on the 1st of January; and he was committed on the 4th.*

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* The following communication was received from Col. De Havilland, one of the Jurats of the Royal Court, after the Commissioners had left Guernsey. As it contains a more detailed statement of Mr. Gallienne's case, it has been thought advisable to insert it here.

*James Gallienne's Case.*

On the last day of 1842, James Gallienne, an advocate, dined with a friend, Mr. Corbet, an English gentleman, a ten days' acquaintance, with a third gentleman. They separated at nine o'clock, having drunk but little wine; and promised to meet again in the evening, at a house where four or five young girls lived, of Galliene's acquaintance; to one of whom he was attached, named Rose (to whom he has been since married). This house was not a public brothel, but visited by some young men. Gallienne did not arrive till midnight, having gone elsewhere after leaving Mr. Corbet; and he was not sober when he arrived. Mr. Corbet and the other gentlemen had come there before him.

A report of Mr. Corbet having been wounded reached the Court; and, on inquiry of the Crown lawyers, it appeared that they had considered the case as one of "Adjonction" for damages, but that Mr. Corbet had positively refused to prosecute. On which the Court ordered the case to be brought before them, on an "Accusation," which was accordingly laid against him, containing two "*Chefs*," as follows.

"Cour Royale, 4 Février, 1843."

1° "Monsr. James Gallienne ayant comparu ce jour, et étant accusé d'avoir, dans la matinée du premier Janvier dernier ou environ, dans une maison située proche la Conture, en la paroisse de St. Pierre Port, appartenant au Sieur Pirie, méchamment et de propos prémédité porté deux coups violens avec un ou des instrumens tranchans, un au bras gauche et l'autre à l'épaule droite d'Uvedale Corbet, Ecuyer, lesquels coups ont causé des blessures graves au dit Monsr. Corbet; au grand danger de la vie du dit Monsr. Corbet;"

2° "Et d'avoir, de plus, le dit Monsr. Gallienne, armé d'un ou des instrumens tranchans, dans la matinée du dit jour 1° Janvier dernier, après les dites blessures données par lui au dit Monsr. Corbet, et après que le dit Monsr. Corbet eut quitté la dite maison du dit Pirie, poursuivi et cherché le dit Monsr. Corbet en divers endroits et jusque dans une maison, occupée par le sieur Thomas Webber comme cabaret, et connue sous l'enseigne du "*Jolly Sportsman*," et située aux Camps Collette Nicolle, en la dite paroisse de St. Pierre Port; et ce, dans l'intention de tuer et occire le dit Monsr. Corbet."

*Interrogation.*—Gallienne pleaded *Not Guilty*, and, on his *Interrogatoire*, declared that Mr. Corbet was his friend, whom he would at any time protect rather than molest or hurt in any way, if he had been in his right senses. He acknowledged the knife shewn to be his, but that he had no recollection whatever of having then had it in his hand or any other. That there had been neither "*propos délibéré* or *méchanceté*," of which Mr. Corbet himself must be convinced. He had never quarrelled with Mr. Corbet before.

*Mr. Corbet.*—They had been intimate about ten days; Gallienne had dined with him at his house, that day, with a third person, and had left at nine o'clock; had drunk very little. They had agreed to meet again at the house in question; he, Gallienne, had gone accordingly; but not before midnight. He was even then much excited, and began quarrelling with the girl Rose. Corbet and the other person had been there some time before and playing cards, low stakes, at *loo*; and seeing Gallienne in that state, Corbet tried to appease him. On some frivolous pretence Gallienne then tried to quarrel with him. Again, Corbet appeased him. But Gallienne suddenly left the room, and in a short time returned, and incoherently began to abuse Corbet, which he bore awhile. He, Corbet, told him he was drunk, and, if he continued, he would have to repent it. Gallienne continued, however; grew more excited and incoherent; at one time would insist that he owed him 1*l.* (they had played cards), while it was he, Corbet, that owed him 15*s*. This behaviour continued a long time. He found fault with the girls and with everything that was passing. He challenged Corbet to box with him; at the next moment cried like a child, because the other gentleman had called him a "naughty boy;" then menaced him. He then left, as if to retire to bed (he lived in the house), but presently returned, with a handful of mud to throw at Corbet's face; again Corbet pacified him. Gallienne continued, however, to insult him; when he, Corbet, told him he would hold him responsible for his conduct, to which Gallienne replied he was quite ready to answer. He then became more violent still, and required being held for some time. Presently he took a candle and went to his room, and called to Rose for his razors. On which, Corbet told the other gentlemen they must be on the watch, lest he should do himself a mischief; but suddenly Gallienne appeared again and advanced on them precipitately. Rose then stood between him and Corbet, and, seeing him so furious, screamed and ran to Mr. Corbet for protection, thinking he was after her. Corbet, naturally raising his arm to protect her, received a violent blow on it; a sort of scuffle ensued; and they reeled together over the other gentleman's chair. Corbet then left the house, and, going out, told the gentleman he was stabbed and must go to a surgeon. One of the girls accompanied him, and bound his arm on the way. Corbet further declared that he had not seen any weapon in Gallienne's hand when he struck him; that he had not perceived the wound on the shoulder till he was at the surgeon's; he considered it as quite accidental, when they fell together over the chair. That during the evening they had been drinking *sherry, punch, and brandy and water*, and that it had appeared, when Gallienne went to his room, that he had emptied a phial of *laudanum*, which, if he drank it, must have increased his phrenzy. He considered both wounds accidental, especially the one on his shoulder. He was satisfied that when he went up stairs it was not to fetch a knife. There was fresh excitement from the *laudanum*; when he came towards him he used no threat. Rose, running to him might, in his state, have raised a momentary feeling of jealousy; but firmly believes that, when he entered the room with the knife, it was not his intention to do bodily harm to any one.

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6185. Have you the crime of Mayhem now?—I do not recollect a single precedent. I suppose it would be considered to exist.

6186. In Terrien Mayhem appears to have been a wounding, so as to cause the loss of a member.—It would now be considered as coming within the term "blessé."

6187. There is an old offence called "Assault de Charue." Is that an existing offence?—It is no longer a specific offence.

6188. It appears to have been a wound upon the person while at plough?—Yes; which was an aggravation of the assault.

6189. It is no longer an existing offence?—No; nor do I consider that it would be considered as an aggravating circumstance.

6190. The *Bailiff*. Mayhem, I consider, would be exactly in the same position here as it was in England when Blackstone's Commentaries were written.

6191. (To the *Contrôle*.) Is there any distinction with respect to people who kill themselves under an accusation of crime? Under the old law their goods were forfeited?—That would depend upon the verdict of the Coroner's Inquest. Unless that specified that the person was insane at the time, it would lead to forfeiture.

6192. Therefore being accused of a crime would make no difference?—I think not. It might be evidence of sanity perhaps.

6193. With regard to what we call in England False Imprisonment; would that be indictable?—Yes.

6194. What would it be called?—Here is a modern case, not exactly of False Imprisonment, but of illegally detaining a person. It was on the 18th of July in this year. It was a case of ill treatment against James Robert. The first count was, "pour avoir, sur le chemin public depuis Havilland à l'Arcade Commerciale, en la paroisse de St. Pierre Port, 1° assailli, maltraité et jetté par terre Eliza Gehagan, fille mineure d'Edouard Gehagan, dont s'est ensuivie contusion, meurtrissure et effusion de sang; 2° pour avoir illégalement et sans droit saisi la dite mineure au bras droit, l'avoir détenue prisonnière, et l'avoir conduite par force et violence depuis le dit chemin proche Havilland jusqu'à l'Arcade Commerciale en la dite paroisse, ou le dit Robert livra la personne de la dite mineure entre les mains de Messrs. J. F. Draper et R. Webb, deux des assistants du Connétable de la dite paroisse, en l'accusant faussement de lui avoir volé une épinglette ou partie d'une épinglette en or."

6195. What was the form of the mise en accusation in that case?—"A se voir adjuger à telle peine punition ou châtiment corporel." There was a special finding in that case.

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Corbet's evidence was corroborated and confirmed by other witnesses; but the gentleman alluded to had left the Island immediately, and could not be had for a witness.

The Court were satisfied that in this first charge no "*propos délibéré*" or "*méchanceté*" had been proved. As to the second "*Chef*," it was proved that Gallienne, on finding Corbet was gone, followed (but took a different direction), having still the knife in his hand, declaring that he would kill him; when he reached the public house, not finding him there, he desisted.

On which, and having pursued on the Queen's highway, and for his riotous and violent conduct in the house, the Court unanimously sentenced him to two months' imprisonment in the public jail and costs. The Crown lawyers had concluded to *three* months' imprisonment.

It should be observed that the delay which occurred in bringing Gallienne to trial was owing to the wound in Corbet's arm not having healed immediately and the surgeon refusing to declare his life out of danger. Gallienne was twenty-four years of age, and was a Lieutenant of Militia.

The Lieutenant Governor was present at the whole of the trial, and made no remark then. But, on the 9th of the same month, he issued a Militia Order, dismissing Gallienne from his commission, in as degrading a manner as could well be, *for having been capable of using a knife against an unarmed person.*

Subsequently, the Lieutenant Governor sent to the Court an extract of a letter from Mr. Manners Sutton, dated 12th February, to the effect that the Home Secretary was also of opinion that Gallienne, having been found guilty of stabbing and wounding, was no longer a fit person for the Bar of the Royal Court, and that he wished the Court's attention to be drawn to the subject.

The Court answered that they had intended, at the expiration of his imprisonment, to take that point into consideration, but would now go into it: and then emanated an Acte of 24th February, by which Mr. Gallienne was suspended a year and a day from the Bar of the Court, to date from the day of his enlargement from prison: and, at the expiration of this time of suspension, he should be at liberty, by means of a "*Requête Civile*," to petition the Court for readmission, on which the Court would then decide "*ainsi que de raison.*" A copy of this Acte was sent to the Lieutenant Governor.

The Lieutenant Governor, however, did not yet appear to have been satisfied; for another letter from the Home Office, dated 9th March, in reply to his further representation was received, of which he sent an extract to the Court, stating that the Home Secretary still adhered to his former opinion, and desired that the importance of the case should be brought to the notice of the Court, as it might attach, and justly too, to their decision, and to the public evil which might result from it; and that he did not consider the limited suspension sufficiently marked the Court's sentiments on the nature of the crime, which might tend to lower the character of the Court in the eyes of the public. The Court, however, in reply, declared their adhesion to their acte of suspension for a year and a day, leaving the further consideration of the case, when Mr. Gallienne should or might apply to be reinstated, at the expiration of a year and a day. Mr. Gallienne, however, has not hitherto made any application to be reinstated; but, on the contrary, has since been imprisoned, for eight days, for irregular conduct in acts of "*brigandage*" on the Queen's highway.

It was evident, from these extracts of letters from the Home Office sent to the Court, that the Lieutenant Governor had not fairly represented the case to the Home Secretary; for, as he was present during the whole of the trial, he heard each Jurat express his sentiments openly in giving his vote, and could not but gather therefrom that they all exonerated the prisoner of "*propos délibéré et méchanceté*," although it was not so expressed in the sentence, which was in these words:—

"Ouies les conclusions des officiers de la Reine, est le dit Gallienne condamné à deux mois d'emprisonnement dans la prison publique et aux frais, après avoir entendu les témoins des officiers de la Reine." Guernsey, 17th Octobre, 1846.—T. F. De Havilland.

P.S. The Court's answer was dated the 15th March, 1843, and was to the following effect. That, however painful it was to the Court to appear to differ from the Secretary of State, Sir James Graham, the Court's decision had not been arrived at without the most careful and mature consideration of all the circumstances of the case; and that their opinion continued unaltered; but that, even if it were otherwise, the Court's acte had been registered on the public records of the Island and notified to Mr Gallienne, and was considered final by the Court.—T. F. De Havilland.

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6196. With regard to a Common Battery; is not that provided for by Terrien?—Yes; the exceptions mentioned at page 497 of Terrien, lib. xii. c. xxvi., do not exist as matter of law, and would not be strictly followed now.

6197. The *Bailiff*. Moderate correction would be allowed in the case of relations.

6198. Is Rape punishable capitally?—I conceive it is. Within this century persons have been hung for rape here.

6199. In the case of Murder; could you give any other sentence than death?—No; I should think not.

6200. In Rape could you give any other sentence than death?—I think you might.

6201. In the Coustumier, the offence appears to be an outrage upon a virgin; is that distinction made now?—No.

6202. Nor the exception mentioned in Terrien, when the offence has been committed on a woman of bad fame?—No.

6203. Is the offence in law the carnally knowing a woman against her will?—Yes. We should follow exactly the same principle as the English law.

6204. In the case of those offences being committed with children is any distinction made?—It would be an aggravating circumstance laid in the indictment.

6205. Is there any age at which a child is held incapable of giving her consent to the crime?—That would be under the age of puberty, I suppose.

6206. Suppose the offence to be committed upon a child above ten, and under twelve: would she be held capable of consenting to it, so as not to make it a crime?—I do not think there is any strictly legal distinction.

6207. The *Bailiff*. We have had that before us in consideration; and it appeared to be the feeling to follow the principle of the English law that a child below a certain age could not give consent.

6208. You would probably take the age as a matter of evidence of want of consent?—Yes.

6209. The *Procureur*. That was tried in the case of a man of the name of William Laurens. The child consented; but they punished the man nevertheless.

6210. What was the age of the child?—From ten to eleven years old. He was condemned to two months' imprisonment. In that case the girl in question belonged to a family whose sisters were not very well behaved; and there is no doubt but that the child was consenting.

*The Act was read as follows.*

6211. Samedi, le vingt septième Juin, 1818, devant Messire Pierre de Havilland, Chevalier, Bailli, &c.

Sur l'action des Officiers du Roi contre William Laurens, fils Nicolas, de la paroisse de Torteval, prisonnier dans la prison publique, à soutenir leur preuve en la cause qu'ils ont contre lui à se voir adjuger aux peines et punitions imposées par les loix pour avoir, le dit Laurens, Vendredi, le 8e Mai, 1818, ou environ, dans un appartement occupé par le dit Laurens proche la Tour Beauregard, en la ville et paroisse de St. Pierre Port, avec force et violence jetté Marie Pritchard, fille de feu Jacob Pritchard, âgée de dix à onze ans ou environ, sur son lit, et là avoir félonieusement commis ou attenté de commettre le crime de rapt et de viol sur la personne de la dite Marie Pritchard, et leur payer leur dépens. Après que, par acte du 16e Mai, 1818, le dit Laurens à fait niance d'avoir commis le dit crime et a fait choix de l'Avocat De Jersey, pour son conseil: est le dit Laurens condamné à deux mois d'emprisonnement dans la prison publique, dont le premier mois sera au secret au pain et à l'eau; et aux fraix.

6212. Is Abduction a crime here?—I know no precedent for it. The law in Terrien with regard to it, Lib. xii. c. xiv. p. 484, would not be strictly followed.

6213. You would treat it as a general act of violence?—Yes; I presume the Court would do so.

6214. Is there any difference between "rapt" and "viol"?—It comes to the same; but in the former case you must have taken the person and carried her off.

6215. There might be rapt without viol?—Yes.

6216. Have you any Order in Council relating to Unnatural Offences?—No; the Jersey Order in Council does not extend to this Island.

6217. Are they punished félonieusement?—Yes; they are punished capitally: but it is right to add, that the Court are very unwilling to investigate such a case, and rather conceive that the investigation does more harm than the punishment would do good.

6218. It is understood, is not it, that you may try Treason here, but not punish it?—There is some doubt whether the Court have authority to find Guilty or not. There is some doubt upon the interpretation of the Constitutions of King John and the Précepte d'Assise upon that subject. There is also a reference to it in the Remarques of Le Marchant on the Approbation des Loix, in reference to Terrien, Lib. xii. chap. xvii.: and in the Regulations of the Commissioners of 1607 there is something bearing upon it. I conceive it pretty clear that the Court may try.

*The passage from Le Marchant was read as follows.*

6219. Chapitre Dix-huictiesme (17 de Ter.)

Approbation.

Nous en usons entièrement; et suivant le Précepte d'Assise la cognoissance en appartient au Baillif et Jurez, et la punition et Jugement réservé à Sa Majesté.

Remarque 1. Par le Précepte d'Assise, tant la cognoissance que le jugement du crime de fausse monnoye, et des deux autres y déclarés, appartient au Baillif et Jurez (qui en ce devroyent estre assesseurs des Juges d'Assise); et la punition seule en est réservée à Sa Majesté. Car la punition et

jugement d'un crime sont choses bien differentes, et doibt le jugement précéder la punition; combien que les Approbateurs qui estoyent presque tous gens de Cour semblent les confondre, ou du moins mettre hors d'ordre. Et sont tous faux monoyeurs, rogneurs de monoye et leurs complices, receleurs, et participants, punissables de mesme peine, qui est de mort ou dernier supplice.

6220. Where should you now look for your definition of Treason?—I suppose we should take English authorities.

6221. The English authorities are statutable authorities?—We should take those.

6222. The *Bailiff*. We should take the statute of Edward the Third, I think; not that of Henry the Eighth nor George the Third.

6223. The *Contrôle*. In the last case of Coining, the Court found the persons Guilty; and the case was remitted to the Crown for the punishment.

6224. The *Bailiff*. I think, that arose from a case of murder, in which the Court could come to no conclusion upon the fact. It turned partly, I believe, upon the admissibility of evidence, or something of that kind. They sent up a special case to the Privy Council to know what they were to do; and the Privy Council sent back word to the Court that it was their duty to decide; and that, if they decided wrong, the party might have an appeal. In that case it was said the Privy Council has no authority to decide upon facts presented to them. And, I rather apprehend that since then, the principle has been applied to the three cases enumerated in the Précepte d'Assise, and referred to by Le Marchant in his Remarks on the Approbation of the 17th chapter of the XII Book of Terrien. In point of fact, in the recent cases the Court have come to a decision upon the facts.

6225. (To the *Contrôle*). What should you say as to Uttering money, knowing it to be counterfeit?—That could be taken cognizance of by the Court here without remitting it. There are precedents "pour avoir blanchi des liards." We state the particular facts in the charge, and leave the punishment of it to the ordinary jurisdiction of the Court.

6226. Are there many cases of that kind?—Very few; I do not think there has been one since I have been at the Bar.

6227. In the case of turning a coin of a smaller denomination into a larger one; should you punish it by the common law?—Yes. With regard to coining, I consider, the limitation in the Précepte d'Assise would only apply to the coin of the realm, and that counterfeiting a foreign coin would be tried and punished here, though the words "fausse monnaie," in Terrien, are pretty general.

6228. What do you mean by coin of the realm?—Coin of the English realm.

6229. Should you consider Jersey coin the coin of the realm?—No coin is issued in Guernsey or Jersey. The copper coins which are current there are merely tokens.

6230. *The following proceedings were delivered in and read.*

Le 7e jour de Février, 1699, devant Monsieur le Lieut. Bailli; présents Messieurs Wm. Le Marchant, sen., etc., Jurés. Après lecture de l'ordre suivant il a été ordonné qu'il sera enregistré.

At the Court of Kensington, the 21st December, 1699. Present the King's Most Excellent Majesty, in Council.

Upon reading this day, at the Board, several depositions and proceedings before the Royal Court of Guernsey, relating to the coining and uttering of several false half crowns by John Richards, William Cockley and John Campbell, soldiers of the Royal Regiment of Fusiliers, in garrison there; and the said Court, upon the whole matter, being of opinion that the said persons are duly convicted of the crime of coining and uttering false money, and of transgressing the laws as aforesaid; and having humbly represented that, by several laws and charters granted to them by Her Majesty's royal predecessors Kings and Queens of this Realm, the judgment and punishment of this crime is reserved to His Majesty, and praying His Majesty's royal determination thereon; and whereas it appears, by the depositions and proceedings aforesaid, that John Richards was the pesron who coined, and that John Campbell and William Cockley were the utterers of the said false money, His Majesty in Council is pleased to order, and it is hereby ordered, that John Richards be punished with death for the crime aforesaid; and that John Campbell and William Cockley have His Majesty's gracious pardon, and be discharged from their imprisonment. And hereof the Bailiff and Jurats of Guernsey are to take notice, and govern themselves accordingly."

Ensuite de la lecture de la susditte ordre, le susdit Jean Richards a declaré que son véritable nom est Denis Darcy, et a confessé qu'il est coupable du crime de faux monoyeur. Apprès quoy la cour a prononcé la sentence suyvante contre luy.

"Denis Darcy, alias Jean Richards, ayant ce jourd'huy comparu devant la cour à la suite des officiers du Roy pour recevoir sentence de mort, conformément à l'ordre de sa Majesté en conseil cy-dessus écrit, pour avoir été convaincu et atteint d'avoir fabriqué et fait passer en cette Isle des pièces de demi-écu de France fausses, faites d'étain, est condamné, ensuite des conclusions des dits officiers, à estre presentement mis entre les mains de l'exécuteur de Justice, mené par luy au lieu du supplice, la harte au cou, là pendu et étranglé jusques à ce que la mort ensuive, et tous ses meubles et héritages sont acquis et confisqués à Sa Majesté."

6231. Have you any law with respect to cases of Sedition, Blasphemy and Libel?—They are punished by the common law.

6232. Do you ever lay them félonieusement?—I suppose not.

6233. In the case of Seditious Writing should you do so?—I think a case might occur in which seditious writing might be laid félonieusement.

6234. The *Bailiff*. I think not, short of Treason.

6235. As to Slander, what is your practice?—Slander is always dealt with by a cause en adjonction. The criminal court could not take cognizance of Slander. It would be considered in the light of a querelle personnelle.

6236. Have you any distinct law with respect to Unlawful Oaths?—No.

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6237. Breach of prison is mentioned as a crime, in Terrien, is it not?—Yes; lib. XII. c. xxxii. p. 514; it would clearly be an indictable offence still.

6238. *The passage was read as follows.*

"*Brisé la prison.* Si aucun brise la prison, ou en eschappe, il doit estre adjourné à trois briefs jours, et les tesmoins ouys sur ledit bris de prison, et autres cas dont il est accusé; pareillement s'il est reprins, on lui fait son procez, non seulement sur ledit bris de prison, mais sur les autres cas. Et s'il se rend de luy-mesme à la prison pour se justifier, il luy faut avoir pardon dudit bris de prison, et y en a formulaire au protocole de chancellerie. Qui monstre bien que la peine est corporelle d'avoir violé ce lieu, qui doit estre reputé sainct (ainsi que les murailles et portes d'une ville) comme dedié à l'effect de Justice. Toutes fois il faut avoir regard s'il y a eu force et violence commise, ou si le prisonnier est sorty ayent trouvé la porte ouverte, ou autrement eschappé par la négligence du Geolier; et si le prisonnier estoit justement ou injustement detenu ou vexé de trop longue prison; pour selon les circonstances moderer, ou aggraver la peine, en donnant sentence sur le cas principal, pour lequel le prisonnier estoit detenu. Et encores qu'il en soit trouvé innocent, si est il punissable du bris de prison.

6239. In your practice, would the crime be purged by the man giving himself up again?—No; I think not. And the assisting persons escaping from prison has come under the cognizance of the Court.

6240. Here is on offence in Terrien, lib. XII., c. xxvii., p. 498, called Ledenge?—Yes. It is a species of slander.

6241. He says they are divided into two sorts, Ledenges Criminelles et Simples. Is there any such distinction now known?—I do not consider that any case of ledenge would come under the cognizance of the criminal court at all. I am not aware of any precedents for it.

6242. You do not think that what is stated in the 27th chapter of Terrien is any longer law?—I should think not: there would not be any holding by the nose now.

6243. The *Bailiff*. In Terrien, the punishment was not felonious, but by fine. La Justice luy doit faire griefvement amender par le châtel.

6244. (To the *Contrôle*). With respect to Returning from banishment?—Returning from banishment is a specific offence

6245. Of what amount?—It is laid "à telle peine, punition ou châtiment corporel."

6246. Never more?—Never more.

6247. Suppose the case of a return from banishment for life?—Returning from a simple banishment for a term of years, I conceive, would always be "à telle peine, punition ou châtiment corporel." In cases of banishment for life, the first sentence states that they are not to return on pain of death. And then, no doubt, they would be indicted félonieusement, as in the case of returning from transportation.

6248. The sentence of transportation has not that clause, has it?—No.

6249. Would you indict félonieusement for Returning from transportation?—I presume so. There is no precedent for it.

6250. In the case of returning from banishment for twenty years, should you still confine the charge "à telle peine punition ou châtiment corporel?"—That would rest on the same ground as return from transportation. In all cases, I think, you would indict félonieusement, where the criminal had been banished for longer than "châtiment corporel" authorizes, namely, for seven years or upwards.

6251. In the case of returning from twenty years' banishment, you would inflict a higher punishment than banishment for six years?—Yes; and, therefore, must indict félonieusement.

6252. With respect to Perjury?—In perjury the old practice, in most cases, certainly was, when the perjury was committed by a witness, for the Court to dispose of it summarily, and not by indictment. The man was ordered at once to choose counsel: there was no evidence at all heard; and then he was condemned to punishment.

6253. Now it would be the subject of a formal indictment, would not it?—Certainly. In some cases it would not. I recollect one case of very gross prevarication, in which it was taken in that way during the trial.

6254. Prevarication would be a contempt of Court in any case?—Yes.

6255. Perjury would be something more serious; would not it?—Yes. I fancy the principle was on account of the great difficulty there is in proving perjury; the Court found it more convenient to punish it at once. There has been a prosecution for perjury during this year.

6256. Under what class of indictment does that come?—"A telle peine, punition ou châtiment corporel."

6257. The crime of judicial perjury appears to be provided for by the Approbation. The punishment of death imposed in Terrien, Lib. xii. chap. xviii., has been mitigated?—Yes.

*The passage was read as follows.*

6258. Approbation. Chapitre Dix Huictiesme.

Les forgeurs and faiseurs de faux contracts, les faux tesmoins and les suborneurs sont punis à la discretion de Justice de mesme selon l'exigence du fait.

6259. All false witnesses are to be punished at the discretion of the Court?—Yes.

6260. That would be perjury which was a false swearing in a Court of Justice?—Yes.

6261. Suppose I want to indict a man for perjury; have I any means of bringing it before the Court?—Yes: you may go to a constable and make your charge to him. If the constable refuses to interfere, you may come before the Court and make your complaint to them.

6262. The intervention of the Crown officers, in fact, is not wanted till the Court sets them in motion?—Certainly not. At the end of last year, a gentleman preferred a charge of perjury against a witness, and was told that the case would be entered into; and the case was entered into. There were two cases; and both cases were fully gone into. One was a case of a woman of the name of Bisson; and the other was the case of a soldier called Gilgas. In both those

cases two persons came forward and said, "We have a charge of perjury to make." The Court said, "Will you give in a list of your witnesses to the constable?" And the cases were fully gone into.

6263. Might the Crown officers start a thing of that sort?—Yes. In the last prosecution for perjury the Crown officers did start it.

6264. The *Bailiff*. In the last case, the perjury arose in a trial conducted by the Crown officer.

6265. The *Procureur*. In the conspiracy case the matter was laid before the Court: and the Court were of opinion that, in that particular case a proceeding, should not be instituted.

6266. Mr. *Carré*. The Crown officers consulted the Court as to whether they thought they ought to bring it forward ex officio. And the Court were of opinion that it was not a case in which they could require the Crown officers to bring it forward ex officio.

6267. That it should be left to the individuals to bring their complaint if they thought proper?—Yes.

6268. The *Procureur*. In other cases individuals have done it; and there is a mode of doing it.

6269. The *Contrôle*. In the case of any trial, criminal or civil, any person coming forward and saying, "I wish to charge such a person for perjury," might do so. If the Court were satisfied from what they had themselves seen, they might refuse to enter into it; but, if there was the least ground for it, they would require proceedings to be instituted.

6270. (To the *Contrôle*). Would the time expire in a year and a day for a prosecution for perjury?—No. Twenty years would be the time. It is a crime publique.

6271. Is the Bribery of officers a specific offence?—I presume it is an offence most certainly. There is something upon that subject in Terrien; and there are Ordonnances upon it also.

6272. What would the form of the indictment be there?—It would depend, to some extent, upon who the officer was.

6273. Of course it could not be félonieusement?—I should think not, certainly.

6274. But might it be à châtiment corporel?—I conceive so, certainly.

6275. For either offering or taking a bribe?—Yes.

6276. Would that be under the general authority of the Court?—Yes.

6277. Compounding a felony is mentioned in Terrien, is not it?—Yes; at page 508, Lib. xii. c. xxx.

*The passage was read as follows.*

6278. *De transaction et composition en causes criminelles, Chap.* xxx.
*La coustume au chapitre de treves fraictes.*

L'en doit sçavoir puis que la clameur de la suite est faite, ou que la bataille est gagee de felonnie, l'en peut parler de paix, et la faire par le congé de la justice en tout temps jusques à tant que la bataille soit menee à fin: fors sans plus en suite de trahison, et de larcin, en quoy la coustume de Normandie ne souffre point que l'en parle de paix en nulle maniere, puis que les batailles en sont gagees. Car qui de trahison, ou de larcin prend loyer, ou le donne, il moustre bien qu'il n'est pas quitte de tels crimes. Et qui sans le cõgé de la Justice traitera de paix, ou le fera en cause criminelle, il l'amendera grievement; et tout ce qu'il a fait rien ne vaudra.

6279. Amender grievement is the punishment?—Yes.

6280. That you would construe probably to mean a heavy fine?—Yes.

6281. Might the Court also inflict other punishment for it?—I think so.

6282. Should you lay it félonieusement?—I should presume not.

6283. What do you say as to Riot?—We have no precedent. I presume it would be punishable as general misconduct.

6284. For a riot in England there must be a certain number of persons joined together. Have you any law of that sort?

The *Bailiff*. I apprehend we could have no felonious riot here.

6285. Suppose it were a riot for the purpose of blowing up Fort George, for example, you would probably lay it according to the intent?

6286. The *Contrôle*. Yes.

6287. Suppose it were pulling down a house?—That might be laid félonieusement, I think.

6288. Do you think a combination of persons would render that an offence which otherwise would not be so?—I take it, it must be so.

6289. The *Bailiff*. The assembling of multitudes, so as to create danger to the public peace, would be a riot, like the common law riot in England; but no conduct on their part would render it a felonious riot.

6290. (To the *Contrôle*.) Is there any express law as to Smuggling?—In cases of smuggling we are entirely guided by such Acts of Parliament as are extended to this Island in the body of the Act.

6291. Are those matters proceeded with summarily before the Court, as a Court of Police Correctionnelle, or are they tried by the Cour en Corps?—They are generally tried by the Cour en Corps upon a proceeding for a fine by a penal action. In some cases difficulties have arisen as to some of the matters which, it is provided, may be treated summarily. And some of those matters have been occasionally treated by the Cour du Quartier; for example, a claim for delivering up the register of a vessel. It has generally been considered that the Cour du Quartier represented the Justice of the Peace in such matters.

6292. The *Bailiff*. I apprehend, where the act was forbidden by an Act of Parliament, it would be an offence, and might be punished by the general jurisdiction of the Court; but, where a course of proceeding is pointed out, that proceeding must be followed.

6293. Mr. *H. Dobrée* (Jurat). Some of the clauses of the Merchant Seamen's Act are very difficult of application; particularly with reference to the apprenticeship of boys. Some of the officers of the Customs here have made difficulties in adapting the usual form here to the

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provisions of this Act. I believe, certain forms have since been brought up here, having no authority whatever except the Customs officers having consented to them.

6294. You think that the provisions, applicable to the apprenticeship of boys in that Act, are not applicable to the state of things in this Island; and you have been obliged to draw up some for yourselves?—Yes.

6295. The *Contrôle.* The same thing takes place also with respect to seamen having received their month's wages in advance to get them on board; the police officers have no power.

Robert MacCulloch, Esq., Advocate.

*Robert MacCulloch,* Esq., further examined.

6296. There is a crime in England called Forcible Entry; which is the breaking forcibly into a house under the colour of right. Is that a crime here?—I know of no definite offence of that description, though I have no doubt it would be punished under the common law.

6297. That was probably the sort of taking possession against which the Clameur de Haro took place?—Yes.

6298. Is Sending a threatening letter, or a challenge to fight, an offence?—They are often dealt with as matters en adjonction. They generally, also, lead to a summary proceeding en police, in which the party sending the letter is bound over to keep the peace towards the other.

6299. That power to bind a party to keep the peace resides in the Bailiff and two Jurats, does not it?—Yes.

6300. You not only bind people over to keep the peace; but, wherever a person apprehends bodily injury from another, is not there a mode of taking security from the party threatening the injury, that he will not do mischief to the party complaining?—That is a summary proceeding en police. We have lost the proceeding jurer treves.

6301. Does the party in such a case make a complaint upon oath?—Yes; the Constable brings up the party: and, after the witnesses have been heard, both parties are sometimes bound over to keep the peace.

6302. What is the nature of the recognizance?—It is generally done by a promissory oath. The Greffier tells me that he has met with a case in 1807, in which the party was bound in the sum of 300*l.* to keep the peace.

6303. Mr. *De Courcy.* In 1828 I was bound in the sum of 100*l.*, and was obliged to find bail to that amount, though I offered to lodge the money in Court.

6304. The *Contrôle.* I have known cases in which the party complained of has been bound alone. And I know one or two cases in which the party has been bound jointly with two others, or with one.

6305. To the *Contrôle.* Suppose the party cannot find a surety to answer for the amount; what is done?—I have never known a case arise of that kind.

6306. The *Bailiff.* I apprehend, when a person refuses to be bound over, or cannot, he is necessarily sent to gaol.

6307. For how long?—For the time during which he is to be bound. If he is bound to keep the peace for three months, he must stay in gaol for that period, if he does not find the security.

Mr. J. Bowditch.

Mr. *James Bowditch* examined.

6308. You are a solicitor in London, are not you?—Yes; or a.ner of the Island of Jersey at present.

6309. Have you any observations or complaint o make to the Commissioners?—I must claim the indulgence of the Commissioners while I make some few remarks in my professional character as solicitor for Mr. Langa. It appears that he was arrested on the 27th of October, 1835, upon an affidavit, made before the Royal Court, exhibiting articles of the peace by the wife of Mr. Langa against her husband for cruelty. Surprising it is to say, that that man was arrested; that he was held to bail; and that, for want of giving bail to the enormous sum of 500*l.*, to await the judgment of the Court, he was confined in the gaol of this Island ten years and eight months without redress. I sent over two years ago some affidavits, on which to ground an application for a writ of Habeas Corpus; such writ of Habeas Corpus, and the prerogative writs of the Crown, having been established as running into this Island: but, to my mortification, I could not get those affidavits sworn; nor could Mr. Langa obtain a Magistrate to make the usual affidavit for him. He consequently remained in prison, till there was a hint abroad of this Commission. In the mean time, his petition to the Queen in Council was heard: and I have a letter here, stating that that petition was heard by the Queen, and referred to the Judicial Committee of the Privy Council. I was told, afterwards, by Lord Wharncliffe, that he would not inquire into the fact, as there was a Commission of criminal law about to be issued, who, he said, might very properly inquire into it.

6310[a]. The *Contrôle.* The proceedings to which Mr. Bowditch is referring were altogether in the nature of a civil suit.

6310[b]. The *Procureur.* Entirely so.

6311. (To the *Contrôle.*) Will you produce to the Commissioners the proceedings in that case?

*The same are put in and read as follows.*

"Dame Henriette Anne Potinger, femme de Frédéric Langa, Ecuyer, a déclaré par serment qu'elle se propose d'intenter cause contre le dit Mr. Langa à la voir presenter requête civile en la Cour tendante être séparée quant aux biens d'avec son dit mari pour les raisons contenus dans la dite requête; mais, d'autant qu'elle a raison de croire que le dit Mr. Langa se propose de quitter l'Ile, elle demande d'arrêter sa personne pour l'obliger à fonder un procureur instruit et caution de cinq cents livres qu'il répondra jusqu' à fin de plaid, et du jugé dans la dite cause.

"H. A. Potinger.

"Sermenté ce 17e Février, 1835.

"Jean La Serre, *Lt. Baillif.*"

6312. " En conséquence du serment ci-dessus, je permets à la dite Henriette Anne Potinger, au dit nom, de faire arrêt de la personne du dit Mr. Langa pour l'obliger à fonder un procureur instruit et caution de cinq cents livres qu'il répondra jusqu'à fin de plaid et du jugé en la cause qu'elle se propose d'intenter contre lui à la voir présenter requête civile à la cour tendante à être séparée, quant aux biens: donné à son dit mari fournir les raisons contenues dans la dite requête. Et, au défaut, &c., ce 17e Février, 1835.

" Jean La Serre, *Lt. Baillif.*"

" Je soussigné, vertu de mon office et de la permission ci-dessus écrite, certifie avoir fait arrêt de la personne du dit Frédéric Langa, Ecuyer, et de l'avoir constitué prisonnier dans la prison publique ce 27e Octobre, 1835.

" Pierre Martin, *Dté. Prevôt du Roi.*"

6313 *a*. It appears from the proceedings that the demand was a deposit to secure the appearance of the husband to a suit of separation or divorce. Is that so?—Yes, to secure his appearance and obedience to whatever the Court may order. In all civil suits here, if the defendant has no real property in the Island, you have a right to arrest his person, on mesne process, for the purpose of obliging him to give bail that he will answer in the suit. In this case, Mr. Langa not having real property in the Island, any person entering an action against him had a right to call upon him to enter into such security. And that was exactly what was done in this case.

6313 *b*. Is there anything in this case which differs from an ordinary proceeding under similar circumstances?—Nothing whatever.

Mr. Bowditch was informed that this, appearing to be a proceeding entirely of a civil nature, was not one the inquiry into which fell within the province of the Commissioners.

*Robert MacCulloch*, Esq., examined.

Robert MacCulloch, Esq., Advocate.

6314. (To Mr. *MacCulloch.*) Do you find any specific law of Bigamy in Terrien?—There is no chapter on the subject, though it is incidentally referred to in page 471. There are instances of prosecutions for bigamy in this Island, but no recent ones.

6315. How was the indictment framed?—A telle peine punition ou châtiment corporel, que la Cour trouvera condigne.

6316. Should you ever lay it félonieusement?—No.

6317. That is under your general common law jurisdiction?—Yes.

6318. Is Contracting marriage with persons under age punishable in this Island?—I understand not.

6319. What is said in Terrien (Lib. xii. c. xiv. p. 448.) would merely render the marriage null?—Yes; the Approbation to the 2nd chapter of Terrien, Lib. ii., says: " Si les Enfans de Famille contractent mariage clandestinement sans le consent de ses père et mère ou de ses Tuteurs et Curateurs les mariages sont nuls sans autre peine ou amende sur les dits Enfans."

6320. What is full age in this country?—Twenty years. The Approbation fixes that clearly in the same chapter.

6321. What is your test of marriage in cases of bigamy? Do you take the ecclesiastical test?—I should consider we do. Anciently we should have inquired into the ecclesiastical question, I should think; but, now that there has been an Ordonnance passed by the States, which has been confirmed by an order in Council, admitting marriages contracted in a civil form, we should admit those as valid.

6322. Suppose the wife is ignorant of the abode of her husband, and has not seen him for seven years; what is your law?—I know there is a distinction taken. The good faith of the wife is considered as an important ingredient in the inquiry.

6323. That is, supposing the wife is the party charged with the bigamy?—Yes.

6324. Should you consider a Nuisance, as carrying on an offensive or dangerous trade, punishable?—Yes.

6325. Or keeping a brothel?—Yes.

6326. The *Bailiff.* I think a dangerous trade is an offence punishable here, either as a matter of police, or, as I should think, by indictment. A case has been brought to my notice more than once; the case of quarries so worked, by blasting, as to throw the stone into the neighbourhood. Those have been treated as matters of police: and I conceive that, if the same person should continue the act, it might be a matter of indictment.

6327. (To Mr. *MacCulloch.*) Furious driving?—There is an Ordonnance; but that applies only to furious driving in the town.

6328. Do you agree with Mr. Contrôle, that an Ordonnance does not destroy the common law right of the Court to punish?—Yes.

6329. Indecent exposure; is that punishable?—That comes under the same rule.

6330. What is the right of the parochial officers to put up notices in churches? Is there any Ordonnance permitting them to do that?—Anciently it was the practice to affix all sorts of notices and advertisements, particularly those which regarded judicial proceedings, at the church doors, and also to have them read by the parish clerk, at the time the congregation was coming out of the church.

6331. Outside the church?—Yes; in the churchyard generally.

6332. Were they read by the clerk outside the church?—Yes; they were read in the town parish by the King's Serjeant; in all the other parishes by the parish clerk.

6333. Is there any right to put notices inside the church?—I conceive not; though, I believe, in some of the churches, when the porch was an open one and there was no wicket gate, the notices may occasionally have been stuck within the porch, to prevent their being destroyed by the rain. I do not speak positively; but that is my impression.

6334. Is it understood that that can be done without the consent of the rector?—A few years ago there was an Act of Parliament passed in England, to do away with notices in the Church, 7 W. 4, & 1 Vic., c. 45. This Act, I believe, extends to these Islands; however, it was sent here for registry. Its provisions were found not to be applicable to all cases of the

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kind which occurred here. And an Ordonnance of the Court was made, which regulated the manner in which those publications were to be made in future. The reading of any notices during divine service, which was prohibited by the Act, was also prohibited here. It was provided that a frame or cadre should be provided by the churchwardens of each parish, and hung up *at or near the door* of the church; in which cadre such notices as had formerly been read, during divine service or afterwards, should be pasted by the proper officer, the clerk or serjeant; and I believe, in consequence, a frame of the sort was provided by the churchwardens in all the parishes.

6335. Do you recollect whether the Ordonnance contained any specific punishment for defacing the notice?—There was not. It was merely a substitution of one mode of publication for another.

6336. Did it regulate the nature of publications which might be put there?—No. Here is the Ordonnance of December, 1837, on that subject.

*The same was read as follows.*

6337. Le seize Décembre, mil huit-cent trente-sept, devant Mons$^{r}$ le Baillif, présens Jean Le Messurier, H. O. Carré, F. Mansell, P. B. Dobrée, F. W. Gosselin, Thomas Le Retilley, et Harry Dobrée, Ecuyers, Jurés.

La Cour désirant se conformer à l'Acte de Parlément de la première année du règne de Sa Majesté, la Reine, Victoria, cap. 45, intitulé, "An Act to alter the Mode of giving Notices for the holding of Vestries, of making Proclamations in Cases of Outlawry, and of giving Notices on *Sundays* with respect to various Matters, 12th *July*, 1837," et enregîtré sur les records publics de cette Ile, vertu d'un ordre de sa dite Majesté en date du 18$^{e}$ Novembre 1837 et, après avoir ouï les conclusions des officiers de la Reine, a rappelé la partie des diverses ordonnances qui enjoint de publier, soit dans une ou dans les Eglises de cette Ile, ou à l'issue des prêches d'une ou des dites Eglises; défend les dites publications; et a ordonné qu'à l'avenir on sera tenu, par autant de Dimanches que l'on fait publier actuellement, de faire afficher, avant le service divin et proche la porte principale de l'Eglise ou des Eglises nécessaires, d'après la loi et coûtume, la pièce qui d'après la loi et la coûtume de cette Ile exige publication. Et servira la dite affiche de publication, en produisant relation du lecteur ou des lecteurs d'avoir dûment affiché la pièce le nombre de fois requise par la loi ou la coûtume. Et sera chaque lecteur tenu de placer un cadre suffisant en bois avec une porte en fil d'archal fermant à clef, chaque Dimanche, une heure avant le service divin, proche la Porte principale de l'Eglise de sa paroisse; dans lequel cadre il sera tenu de placer les annonces ou autres pièces dont publication sera nécessaire, de manière à ce qu'elles puissent être facilement lues par le public. Et ne déroge cette présente ordonnance à la coûtume existante de publier dans les Eglises, pendant le service divin, les annonces de mariage, les jours où il doit y avoir service divin, les jours de fête ou de jeûne qui doivent être observés pendant la semaine suivante, ainsi que ce qui est enjoint par la Liturgie, par Sa Majesté ou par les Autorités Ecclésiastiques du lieu. Et sera cette présente Ordonnance en force à compter du premier Janvier prochain, et sera publiée au cri du marché et affichée aux lieux ordinaires. Et sera transmise par Monsieur le Greffier de la Reine à Monsieur le Juge d'Auregny et à Monsieur le Sénéchal de l'Ile de Serk, pour être également publiée, affichée et enregîtrée dans les dites Iles.

6338. Mr. *MacCulloch.* The practice used to be to affix certain notices on the outside of the door of the church, against the wall. There may have been some exceptions, where the churches had open porches; and they may have been affixed inside the porch.

6339. Do you recollect the proceedings against the Rev. Mr. Dobrée, in reference to that subject?—Yes.

6340. What was he punished for?—If I recollect the circumstances right, they were these. A parish meeting was called of all the parishes of this Island, at the time that there were certain disputes between the Lieutenant Governor and the other Authorities in the Island.* The custom, I should state, in this Island, when a parish meeting is called, is, in general, that the notice should be signed by the rector and churchwardens, except in cases of meetings called for the purpose of electing a constable or douzenier; in which case the notice is usually signed by the constables, and not by the rector or churchwardens. Formerly a distinction was made, and I believe exists to this day in some of the parishes in the country, respecting the place in which those meetings were held. In cases in which the notice was signed by custom by the rector and churchwardens, the meeting took place inside the church. When it was signed by the constables, the meeting took place in the porch of the church, or in the churchyard, and not in the church, unless the rector's and the churchwardens' permission had been specifically obtained for that day. The question has occasionally arisen, whether the constables were entitled to call parish meetings without getting the signatures of the rector and churchwardens, except for the special cases of elections of constables and douzeniers. There has been a diversity of opinion and some discussion upon that point. On the occasion in question, in eight of the parishes of this Island, the notices calling those meetings were signed by the rector and churchwardens. In the two parishes of which Mr. Dobrée is rector, I am informed, for I do not speak of my own knowledge, it was stated at the time that he had been called on to sign the notices for parish meetings, and had refused to do so; in consequence of which the meetings were called in both parishes by the constables, and the notices signed by them only. He objected, of course, to the meetings being held either in the church or in the churchyard. The case which came before the Court respected the parish of Torteval principally. The notice for the calling of the meeting at Torteval was placed in the cadre or frame in which notices of

* The following is a copy of the Notice in question. "Les connétables et douzeniers prient les Chefs de Famille de cette paroisse de s'assembler dans l'Eglise paroissiale, Mercredi prochain, á onze heures du matin, pour délibérer s'il ne conviendrait pas de nommer un comité, pour, au nom de cette paroisse, et conjointement avec les autres paroisses de cette Ile, exprimer, par le moyen d'une très humble remontrance à Sa Majesté, ou autrement, la loyauté des dits chefs de Famille envers la personne et le Gouvernement de Sa dite Majesté, leur attachement aux Institutions de cette Ile, et, en même temps, marquer leur désapprobation de la conduite récente de son Excellence le Lieutenant Gouverneur Napier, en ce qu'elle porte atteinte à nos franchises, méconnait l'autorité de la Justice, et substitue la force au droit qui régit les habitans de ce pays. Et prendre toutes et telles autres mésures que les dits Chefs de Famille jugeront convenables suivant l'exigence du cas. Ce 7 Mars, 1844.

the kind are usually pasted up. I cannot tell, from memory, whether this cadre was usually hung up outside the door of the church, or inside; but on the Sunday in question the cadre was hung up in the lower part of the tower of the church, which forms a sort of vestibule or porch, and is excluded from the open air by a door, which is locked. Entering in by this door, you come into a round vestibule; and there is a second door which separates this porch from the body of the church, which, I believe, is generally kept shut. I cannot speak from my own knowledge. This box was hung up within this vestibule, as I call it, of the church. I am not positive whether Mr. Dobrée turned the frame to prevent the notice from being seen, or tore down the notice. My impression is that he took away the notice out of the frame.

6341. Mr *Andros.* He took away the frame itself, as well as the notice.

6342. Mr. *MacCulloch.* I recollect Mr. Dobrée stating that his reason for taking the cadre was, that the notice was pasted, and that he could not unpaste it. A complaint was afterwards made to the Court by the constables of the parish. I believe that the notice had been taken away, and the cadre taken away.

6343. Was the complaint to the Cour du Quartier?—Yes. The Constable's principal reason for complaining was that it might have prevented the holding of the meeting: and thereupon Mr. Dobrée was fined by the Court.

6344. Thirty livres tournois was the amount of the fine, was not it?—Yes. The Forest case was disposed of immediately afterwards. I quite forget the details of that case.

6345. Mr. *De Havilland.* I believe in that Cadre there were other matters contained, of some importance, besides the particular notice in question.

*The following entries were put in and read.*

6346. A la Cour Royale de l'Ile de Guernsey.

Le quatorze Mars, mil huit-cent quarante-quatre, devant Jean Guille, Ecuyer, Bailiff; présens Messire William Collings, Hilary Olivier Carré, Thomas William Gosselin, Thomas Le Retilley, Thomas Fiott De Havilland, Thomas Andros, et Edgar MacCulloch, Ecuyers, Jurés.

Le Révérend Daniel Dobrée, Recteur de la paroisse de Torteval, ayant été ce jour fait convenir devant la Cour par le ministère des Connétables de la dite Paroisse sur une plainte portée contre lui par les dits Connétables et par les Curateurs du trésor de l'église de la dite paroisse, d'avoir le dit Mr. Dobrée, Dimanche, le 10e Mars courant, immédiatement avant le commencement du service divin dans la dite église, retiré plusieures publications, tant judiciares qu'autres, hors d'un cadre dans lequel (conformément à une Ordonnance de la Cour Royale, en date du 16e Décembre, 1837, fondée sur un Ordre de Sa Majesté en Conseil et sur un Acte de Parlément, enregîtrés sur nos records, le dit Acte intitulé "An Act to alter the Mode of giving Notices for the holding of Vestries, &c.") les dites publications avaient été affichées par le Lecteur de la dite Paroisse, et de s'être de plus, le dit Mr. Dobrée, emparé du dit cadre, lequel était au dedans de la dite église et l'avoir pris et emporté, avec une publication qui y restait attachée, laquelle publication était signée des dits Curateurs et des dits Connétables, le tout en contravention à la dite Ordonnance et à l'entrave du cours des affaires publiques: La Cour, après avoir entendu plusieurs témoins dignes de foi, et ouies les conclusions des officiers de la Reine et vu que c'est la première fois qu'elle est appelée à prononcer sur une offence de cette nature, a seulement condamné le dit M. Dobrée à une amende de trente livres tournois envers Sa Majesté.

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6347. A la Cour Royale de l'Ile de Guernsey.

Le vingt-un Mars, mil huit-cent quarante-quatre, devant Jean Guille, Ecuyer, Bailiff; présens Messire William Collings, Hilary Olivier Carré, et Thomas William Gosselin, Ecuyers, Jurés.

Le Révérend Daniel Dobrée, Recteur de la Paroisse de la Forêt, ayant été ce jour fait convenir devant la Cour par le ministère des Connétables de la dite Paroisse, sur une plainte portée contre lui par les dits Connétables et les Douzeniers de la dite paroisse, d'avoir, le dit M. Dobrée, Dimanche, le 10e Mars courant, immédiatement avant le commencement du service divin, dans le porche de l'église de la dite Paroisse, retiré une publication hors d'un cadre, dans lequel (conformément à une Ordonnance de la Cour Royale, en date du 16e Décembre, 1837, fondée sur un Ordre de Sa Majesté en Conseil, et sur un Acte de Parlément enregîtrés sur nos records le ditActe intitulé "An Act to alter the Mode of giving Notices for the holding of Vestries, &c.") la dite publication avait été affichée par le Lecteur de la dite Paroisse et laquelle étoit signée des Curateurs et des Connétables de la dite Paroisse, le tout en contravention à la dite Ordonnance et à l'entrave du cours des affaires publiques: La Cour, après avoir entendu plusieurs témoins, dignes de foi, et ouies les conclusions des officiers de la Reine, a condamné le dit Mr. Dobrée à une amende de quatorze livres tournois envers Sa Majesté.

6349. The Rev. *Daniel Dobrée.* With respect to this matter, I took those notices out, and carefully pinned them up before I took away the frame, so that public business might not be interrupted. I did take away the frame in order to get the notice unpasted; but I will tell the Commissioners why I did so. I took the frame at first, and turned its face to the wall; and the Clerk's son, young Le Ray, came behind me, and put it in the place where it was before; and he called me an impudent scoundrel for meddling with his frame, in my own church.

6348. At what time was this?—At ten o'clock on Sunday morning.

6349. At what time does service begin?—At ten o'clock in the morning.

6350. Then it was just before the commencement of the service?—Yes; it was just at ten. I would beg leave to add that this vestibule, which Mr. MacCulloch has described, is not an open porch: but it is the place where I am obliged to read the service over the dead; because no coffin can be brought up to the pulpit of Torteval church, because the aisles are too narrow. This vestibule, therefore, is virtually part of the church. I was therefore forced, in my own defence, to remove the cadre, as I had turned it with its face to the wall once before, and could not unpaste this notice, which was pasted with shoemaker's paste. The meeting so called was a parochial meeting, not a vestry meeting. It was called in the church, not out of the church. I did not sign the notice; and, in the Forest case, the cadre was placed, contrary to all custom, on that day, in the body of the church, right opposite the reading desk. That was in direct opposition to my desire, and to insult me publicly, because I had told the Constable repeatedly

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that I would not sign it. I would mention that, in other parishes with which I am acquainted, take the town and the parish of St. Peter-in-the-Wood, the cadre is invariably fixed outside the church doors, not inside. I would also say that I had repeatedly desired the church-wardens to take those things out of the church; and they had never done so.

6351. (To Mr. *MacCulloch.*) In some cases of proceedings for infringing Ordonnances the Douzaine become the parties, do not they?—Not strictly. A certain power is vested in them by some of the Ordonnances to do certain acts; with respect to rebuilding walls, for instance.

6352. (To the *Contrôle.*) Do you recollect the circumstances of the case of Mr. Ferguson?—Mr. Ferguson himself went to the Douzaine to apply for a "bournement," that is, a boundary to his land, which is necessary when any change is made in the situation of property bordering on the public road. He obtained the bournement; and he then built contrary to this bournement. At all events, some one did so. The building was carried on contrary to the bournement: he was then actioned for a fine for doing so.

6353. Who actioned him?—The Douzaine and the Crown officers. It was in the usual form of action. There was no objection taken by him with respect to the ownership. He was then condemned to a fine and ordered to demolish.

6354. Who proved the ownership?—The defendant himself applied for the bournement. The instrument states the name of the owner.

6355. Suppose he applies for a bournement and afterwards sells his property?—A bournement is only in force during a year and a day, without confirmation. If I go for a bournement, it is only as the proprietor I have a right to it. The infringement of it would be a *primâ facie* ground for a suit against the party named in the bournement as proprietor. If the person sued came forward, and said "I am not the proprietor," I consider the onus would lie on him to prove it. In this case the ownership was not disputed at the time of the fine. After having been condemned to a fine and to demolish, he began demolishing; and then his son instituted a Clameur de Haro, on the ground that it was his property. The case came before the Court.

6356. In what shape?—This stopped the demolition; and the constables then sued to enforce the demolition. Upon this, Mr. Ferguson came forward and pleaded the Clameur de Haro as a bar to the demolition. Upon this, the person who had instituted the Clameur de Haro, was called in by the Court; and, on it appearing that the son was really the proprietor, the Douzaine was put to silence. The son produced the title deeds of the property to prove it was his. That is the way in which the case ended. There is a question pending now, on the Ordonnance itself. A person named Sarchet has presented a petition to the Privy Council, which has been referred to the Court for their answer.

6357. Are there many cases in which the Douzaine is the party before the Court?—The Douzaine is not necessarily before the Court at all. It is the Constable who usually comes before the Court in such cases.

6358. Does the Douzaine instruct the Constable to take proceedings?—Yes; the authority to give the bournement is confined to them.

6359. (To Mr. *MacCulloch*). Have you any law respecting Gambling?—There are some ancient Ordonnances on the subject. I know of no other law.

6360. We understand the Game laws are taken out of the category of offences in Terrien, and thrown upon the Ordonnances of the Chefs Plaids?—Yes.

6361. There is an Ordonnance upon that subject, is not there?—Yes; there is an Ordonnance respecting la chasse.

6362. In one of the Ordonnances is not there a regulation that no one shall carry arms who does not pay tenpence a year?—No; that was a projet of an Ordonnance; but the old Ordonnance is still in force.

6363. The Commissioners are told there is occasionally mischief done by firing near the roads?—I should say a great deal at certain seasons of the year; particularly in winter or on any holidays. There is positive danger in walking in the country on such occasions.

6364. Such matters you consider fully within the competence of the Court to regulate?—Yes. The Court from the most ancient times has legislated upon such subjects. I have known instances in which persons for incautious firing in the streets have been dealt with at common law as being a nuisance.

6365. Can you put spring guns in your gardens?—I should say not; though I know of no enactment on the subject.

6366. Is Digging up dead bodies an offence?—I know of no case in this country.

6367. The *Contrôle.* There was a complaint came before the Court, some time ago, in reference to moving part of the wood of coffins; that would have been treated by the Court.

6368. (To Mr. *MacCulloch*). Can you compel a person to execute most of the Offices here?—Yes.

6369. What is the mothod of proceeding if he will not?—It is a criminal offence at common law. In some cases I have seen a fine imposed. A party has been ordered to take the oath within a certain time on a certain penalty. The proceeding is rather a civil action then.

6370. Mr. *Metivier.* If he leaves the Island before he takes the oath, he incurs a fine of 100*l.*

6371. Mr. *MacCulloch.* There are certain offices which have been made compulsory by order of the Court. The offices of Treasurer and Vice Treasurer of the Town Hospital, and, I think, the Country Hospital also, but I am not sure of that.

6372. Would that apply to the office of Procureur des pauvres?—The Procureur des pauvres and the Collecteur des pauvres are ecclesiastical offices. They are sworn in before the Dean. I recollect a case in which a gentleman refused to take the oath of the Collecteur des pauvres. He was proceeded against in the Ecclesiastical Court; and, on his persisting in refusing, the matter was handed over, under an old Order in Council of Charles the II., to the Royal Court. The Court adjudged him to take the oath under the penalty of three livres, doubled upon every subsequent refusal.

6373. In England there is a principle by which certain acts, which a man may do himself, he may not do in combination with others. Have you anything which creates an offence by Combination?—I recollect a case, in which a body of workmen struck for wages, and the matter was treated en police.

6374. The principle being that each man might ask what wages he pleased, but that they must not combine?—Yes.

6375. Suppose a set of masters were to unite to say that they would not give more than a certain amount of wages; would that be treated in the same way?—Yes; it ought.

6376. Would it?—It would not be so likely, perhaps.

6377. What is the meaning of Fouage in Terrien?—It is a payment to the lord of the manor.

6378. With respect to the Caution Juratoire: is it not the practice to oblige a person, who has been complained of for some illegal act, to give his caution juratoire not to repeat it?—Yes.

6379. Did not that occur in Waterman's case?—Mr. *Carré*. He was a tenant in a house belonging to the States. He was complained of, I think by the neighbours, for having established a place for smoking and drying bacon in an apartment in an underground story, where there was no fire-place. This complaint was brought before the Police Court as a dangerous nuisance. From the Acte I gather that this complaint came first before the States' Committee, who had the charge of the States' property. They thought it dangerous, and gave him notice to discontinue the practice; and, upon his continuing it, they brought the matter before the Court.

6380. Which Court?—The Cour du Quartier. After hearing the evidence, the Court, considering that the property of the States was in danger in consequence of Mr. Waterman's proceedings, obliged him to give his caution juratoire that he would no longer light a fire in that apartment. It is also noted in the Acte that he did give his caution juratoire. He afterwards continued the same practice: and, upon its being proved, he was condemned by the Acte of Court of the 24th of January, 1839, to one month's imprisonment.

6381. For breach of the caution juratoire?—Yes.

6382. Is that the ordinary punishment for a breach of a caution juratoire?—That punishment, I suppose, is arbitrary, like other punishments.

6383. Is that the extreme punishment which could be inflicted by the Cour du Quartier?—No; it might have gone further. He was condemned to one month's solitary confinement, and a fortnight of that was on bread and water. The whole might have been on bread and water.

6384. Was any defence made that it was in a different apartment?—No.

*The Actes of Court were read as follow.*

6385. "Le 13e Septembre, 1838, devant Mons$^{r}$. le Baillif; présents, &c.

Sur la représentation du Comité des Etats pour la Rue de la Fontaine que, nonobstant la signification faite au Sieur Jean Waterman, locataire d'une des maisons, appartenant aux Etats, et l'acte du 8e du courant, qui a eu lieu en conséquence, il continue néanmoins à faire feu dans le cellier de la dite maison, ce qui met la propriété des dits Etats dans le plus grand danger, la Cour, après avoir entendu des témoins dignes de foi et le dit Waterman, et ouies les conclusions des officiers de la Reine, a ordonné que le dit Waterman donnera sa caution juratoire qu'il ne fera feu à l'avenir dans le dit cellier: laquelle caution il a présentement donnée.

6386. Le vingt-quatre Janvier, 1839, devant Mons$^{r}$. le Baillif; présents, &c.

Jean Waterman, locataire d'une maison appartenant aux Etats de cette Ile et située dans le Marché, ayant éte ce jour produit devant la cour par Mr. James Frecker, Assistant Connétable du dit Marché, étant accusé d'avoir continué, malgré sa promesse faite par serment devant la Cour, le 13e Septembre, 1838, de ne pas faire aucun feu à l'avenir dans le cellier de la dite maison, à y en faire, au grand préjudice des dits Etats et au danger imminent de leur propriété: La Cour, après avoir entendu des témoins dignes de foi, et ouies les conclusions des officiers de la Reine, à condamné le dit Waterman à un mois d'emprisonnement solitaire dans la prison publique, dont les premiers quinze jours seront au pain et à l'eau".

6387. *The following example of an Order for "La Caution juratoire" was put in and read.*

Henri Taylor Dale, fils de Francois, de la paroisse de Saint Pierre Port, ayant été ce jour produit devant la Cour par le ministère de Josué P. F. Ahier, Ec$^{r}$., un des connétables de la ville et paroisse de Saint Pierre Port, étant accusé d'avoir, soit seul ou avec autre son complice ou autres ses complices, dans la nuit de Samedi le 8e à Dimanche le 9e Novembre courant, dans ou proche la rue des Forges, en la ville et paroisse de Saint Pierre Port, assailli et cruellement battu et maltraité le Sieur James Hayes, le dit Dale ou complice ayant porté plusieurs coups violens, dont un ou quelques uns avec un bâton ou autres instrumens obtus et dangereux, à la joue gauche et au nez du dit Hayes, et d'avoir, le dit Dale ou autre son complice ou autres ses complices, fait tomber le dit Hayes par terre, et, lorsque le dit Hayes étoit par terre, d'avoir, le dit Dale ou autre son complice ou autres ses complices, porté des coups de pied violens au dit Hayes; de tous lesquels dits maltraitemens se sont ensuivis, contusions, meurtrissures et effusion de sang: La Cour, après avoir pris par écrit l'interrogatoire du dit Dale et entendu des témoins dignes de foi, a ordonné qu'il sera constitué prisonnier dans la prison publique pour plus ample information, sauf à lui à donner caution juratoire, qu'il se présentera en Cour, Jeudi prochain: laquelle caution il a présentiment donnée.

6388. (To Mr. *MacCulloch*). Do you consider Adultery a criminal act here still?—No. I cannot tell you upon what authority it has discontinued to be so.

6389. The *Contrôle*. In 1806 a case of adultery was entered en adjonction, and admitted in that form.

6390. (To Mr. *MacCulloch*). Do you think the law as laid down in Terrien on that subject is obsolete?—I think so,

6391. With respect to False Weights: the Court would have the general law, where there was no Ordonnance, would it not?—The whole subject of weights and measures is in a very unsatisfactory state. There are several ancient Ordonnances on the subject, in which the Procureur

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and the Prevôt are ordered to visit and inspect the weights and measures jointly with the constables.

6392. With regard to false weights and measures, the Approbation to Terrien, Lib. xii., chap. xix., *Des faux poids et fausses mesures,* says; "Nous en usons"?—Yes.

6393. Are there any Ordonnances in Chefs Plaids on the subject of weights and measures? —Yes.

6394. Should you recognize the use of false weights as a common law fraud? Yes. About twelve months ago the Deputy Sheriff, accompanied by the constables, went round and examined the weights in several shops, and seized such as were found to be light. The Sheriff also is authorized by certain old Ordonnances to stamp weights and measures: but the Procureur, I know, is joined with him in visiting.

6395. In case of the offence being repeated might you indict by a procès ordinaire?—Certainly.

6396. The twenty-second chapter of the Twelfth Book of Terrien treats "*D'usures et d'usuriers.*" The Approbation adds: "Nous en usons selon le texte de la Coustume de Normandie." Do you hold to that?—Laws have been passed by the Chefs Plaids at different times, regulating the rate of interest. The last reduces the legal rate from six to five per cent.

6397 Is there any usury law at this moment in the Island?—I consider that usury carried to any very serious extent would be treated as a fraud.

6398. If a person refuses to submit to l'Interrogatoire can you put him to torture?—The written law, as laid down in Terrien, Lib xii. chap. xxxv., p. 520, which chapter has the authority of the Approbation, says we may:* but I should doubt whether it could be done legally, from non-user for so long a period. I would just point out one mode of punishment to which no reference has been made, and which ought to be done away with, which is the "Amende honorable à Justice," described in Terrien, Lib. xii. chap. xxvii. p. 499.

L'amende honorable aussi se fait à Justice en cas de crime, quand il est commis contre l'honneur de Dieu, l'auctorité du Roi et la chose publique. Et se fait en ceste manière que le delinquant, estant à genoux, nue teste et nuds pieds et quelque fois en chemise, tenant une torche ardente en ses mains, recognoit son offense, et en requiert pardon à Dieu au Roy et à Justice. Et auec ceste amende honorable, qui se fait à Justice, on a bien accoustumé de condamner aussi le délinquant en amende pecuniare enuers le Roy.

6398. Is that ever practised?—I have known it done on one or two occasions; in cases of women charged with infanticide, and found guilty, not of infanticide, but of gross neglect, concealing the birth, and so on. I recollect that in two cases.

6399. How long ago?—The last was in 1829.

6400. Is Blasphemy now punished criminally?—It is provided for in Terrien, Lib. xii. chap. ix. "*Des Blasphemateurs du nom de Dieu de la Vierge Marie et des Saincts.*" The Approbation says: "Les blasphemeteurs sont punis à la discretion de la Justice, soit par amende pecunielle emprisonment ou punition corporelle selon le grandeur de la blaspheme." But I have known no case of it. The old law is abrogé par non usance: but I apprehend that it would be a crime and punishable if carried to any extent.

6401. Probably the way of punishing it would be as a case of nuisance?—That might be.

6402. The *Contrôle.* There is a very awkward subject about fines for infringing Ordonnances. When persons are sued upon Ordonnances, if they are sued by an informer, whoever he be, in case the party cannot pay the fine, it amounts to there being no redress. A constable, for instance, sues a person under a public Ordonnance for having sold without a license. He is condemned to a fine of 5*l.* If he cannot pay, the constable is obliged to put him in prison and maintain him there. The consequence of which is that the constables do not like to incur those expenses. Again, by the new Order in Council the Court has power to condemn for all fines not above thirty livres; and the Order in Council states that, in case of non-payment on the spot, there are to be as many days' imprisonment as there were livres tournois adjudged for a fine. In case of a person being sent to prison under that Ordonnance also, there is the question who is to maintain him. I conceive, where the fine is sued for by the Crown officers, the maintenance should be at the public expense.

6403. (To the Rev. *Daniel Dobrée.*) In your case, when were you taken up?—I was arrested in Torteval church by two constables. On the day of the meeting I had a funeral to perform at Torteval; I went and performed the funeral in company with Lieutenant Boyle. Immediately after I had performed the funeral, while I had my gown still on, I returned into the church to register the interment according to Act of Parliament. On entering the church, I found the two constables had concealed themselves there; one of them tapped me on the shoulder, and said, "I arrest you in the name of the Bailiff." I said, "Where is your authority?" He pulled out a paper and said, "There it is." I said, "Read it." He either would not or could not. I said, "Let me read it." He declined. I said, "You have no right to arrest me in my own church, upon any warrant whatever." He said, "You have no witness." Upon which Lieutenant Boyle stepped out from behind the door, and said, "I beg your pardon, here am I; I understand French perfectly." They wished to arrest me and take me with them. I declined positively to go.

6404. Did they say what they arrested you for?—No. They showed me a warrant, but refused either to read it to me or let me read it. The plain object of it was to prevent my attending the meeting.

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* The passage referred to is as follows, from the chapter "*De l'examen de bouche des accusez.*"—"Et si l'accusé est contumax et refusant de respondre, ou s'il ne veut respondre pertinemment il peut être contraint par la torture à respondre. Et ne luy sera donné temps à deliberer, car il doibt estre certain s'il veut confesser ou denier le crime à luy imposé, veu qu'il sçait bien s'il en est coulpable."—*Terrien,* Lib. xii., chap. xxxv., p. 520.

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6405. Mr. *Andros.* I must say that the constable attended and gave a very different account from this. He stated that he merely desired Mr. Dobrée to be good enough to be present in Court on the day on which the complaint was to be presented.

6406. Mr. *Carré.* This occurrence took place after the complaint had been laid before the Court respecting Mr. Dobrée's act, which has been referred to. The constables were desired by a letter, either from the Bailiff or from the Crown officers, to give notice to Mr. Dobrée to be present in Court the following Thursday. It was in the performance of this duty that what Mr. Dobrée speaks of took place. The constable, on being called, declared he had never any intention of arresting Mr. Dobrée; and the writ shown was only a letter directing the constable to summon Mr. Dobrée.

6407. The Rev. *Daniel Dobrée.* When the Bailiff has had occasion, in other instances, to have my attendance in Court, he has written me a civil note requesting it.

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*John Ferguson,* examined.

John Ferguson.

6408. What is the complaint you wish to make to the Commissioners?—I complain against the constables of the town Parish and against the Douzaine for suing me in an illegal manner. I have been taken from my store and brought to the bar as a criminal. The Procureur sentenced me to seven livres fine, though the Court did not allow it. I was sent for on Friday to appear before the Court for having infringed upon the bournement of the Douzaine. Upon that subject I was fined three livres; but, at the bar, I denied and do deny and maintain yet that I was not the owner of the property. I stated that I had not called for the bournement. I know there was a Mr. Ferguson did call for the bournement; but who is Mr. Ferguson? His name is Charles, my name is John.

6409. Did not you make an application for the bournement?—No. And the Court would never allow me to prove, at this bar, that I never had one.

6410. Did you say, at the hearing, that the land did not belong to you, but to your son?—I protested against it from the time the Procureur sued me.

6411. The *Contrôle* says that, upon a subsequent occasion, upon your being ordered to pay the fine and to take down the erection you had placed there, Charles Ferguson came and instituted a clameur de haro against you, for meddling with his wall; that, upon that being done, the Court ordered your son to be made a party to the dispute between you and the Douzaine; and that upon the three parties being before the Court the Douzeniers were put to silence. But that upon your first appearing before the Court you never produced the deeds at all?—I protested, when I was first at the bar, that I never asked for the bournement at all. I have two witnesses, who went and asked for the bournement; but it was not for myself, but for Charles Ferguson.

6412. Did you make that defence when you were first brought up about the bournement?—Yes.

6413. Mr. *Agnew.* I was on the committee which gave Mr. Ferguson the bournement the first time; and I declare that he called upon the Douzaine in his own name to give the bournement for a twelvemonth. It was not in any one else's name, but in his own.

6414. *The following papers were delivered in by the Bailiff.*

Documents delivered to the by the Bailiff.

The salary of the Bailiff is 300*l.* a-year.

This salary, though payable under an Order in Council, is not paid in English money, but in Guernsey currency; whereby a deduction is caused of 6 per cent.

The fees attached to the office are various. Some for causes and contracts passed in Court; some for certificates affidavits or declarations; some for writs signed.

I cannot tell the precise amount of these fees. I am told that it never reaches 100*l.* a-year. And I believe the statement to be correct. I may here observe that much of the business, in respect of which these fees are payable, though mere matter of routine, is very troublesome and occasions continual interruption, interfering with other and more important business. Supposing any remuneration to be hereafter given to any other member of the Court, I would suggest the propriety of transferring to such member of the Court the whole of this routine business, together with the fees attached to the same. As it is, a great deal of the Bailiff's time is wasted on business of a mere ministerial or even clerical nature.

It will be understood that, in this proposition, I do not contemplate any reduction in the profits of the Bailiff's office. With respect to the amount of his salary, I do not think that the present is the proper time to offer any observations I may have to make.

P. S. Carey,
*Bailiff of Guernsey.*

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6415. The fees received by the Law officers are derived from causes to swear in constables and douzeniers.
Causes for guardianship of minors and persons unable to take care of their property.
Applications for publican's licences.
Applications for surgeons and apothecaries.
Cases en adjonction.
A few more public applications.
The whole of these require different degrees of attention and care in the drawing up of summonses, &c. The average yearly amount of such fees not exceeding 30*l.* to 35*l.* for each law officer.

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6416.

*Greffe Office, Guernsey,*
*October* 9, 1846.

Sir,

In compliance with the request of the Royal Commissioners, to be furnished with the amount of fees received by me in virtue of my office of Greffier of the Royal Court, I beg to state, for their Honors' information, that those fees are derived from extracts of actes of Court and the registration of deeds,

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Documents delivered to the Commissioners by the Bailiff.

October 10th, 1846.

and that they have not collectively, for several years past, yielded, after the payment of the salaries of indispensable clerks, the sum of 150*l.* per annum.

On the subject of the salary paid to the Greffier by the Crown, I beg to be permitted to make the following observations: viz. that, in the year 1813, the sum of 40*l.* per annum was attached to his office as a compensation for the many duties he had then to perform in connection with the execution of the criminal law, and for which he received no fees. That, since that period, those duties have considerably increased. That the salaries formerly paid to the Procureur and Contrôle (which were likewise affixed to their offices in 1813) have since been doubled. That a salary of 50*l.* per annum has been granted to the Serjeant, an inferior officer of the Court who, until lately, received no allowance whatever from the Crown. That the salary of the Greffier has remained the same as in 1813. That the present Lieutenant Governor and his two predecessors, as well as the late Bailiffs Brock and Guille, fully convinced that the sum received by the Greffier was a very inadequate remuneration for the discharge of the duties appertaining to his office, have respectively made favourable representations to Government, in his behalf, for an augmentation of his salary, which have not as yet had the desired effect.

May I now, Sir, beg you will have the goodness, in justice to my claim for an increased salary, to represent my case favourably to the Royal Commissioners, in the hope they may be induced to recommend Her Majesty's Government to grant me such augmentation as may be deemed right and proper.

I have, &c.,

CHAS. LEFEBVRE,

*Her Majesty's Greffier.*

P. S. Carey, Esq.,

*Bailiff of Guernsey.*

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SIR, *Court House, Guernsey, May* 9, 1839.

I HAVE the honour of enclosing and requesting your Excellency to transmit to Her Most Gracious Majesty in Council the humble petition of Charles Lefebvre, Esq.

The office of Greffier is one of the highest importance to the interests of the Crown, in this Island, and to those of the inhabitants generally. No office requires more attendance, assiduity and fidelity to its trust; and in none can these be more effectually exercised than they are by Mr. Lefebvre.

Without entering more fully into particulars, but confirming in every respect those stated by himself, I beg respectfully to express a hope that the reasons, which prompt me on public grounds to interest myself for Mr. Lefebvre, may equally plead with your Excellency in his favour, by adding your Excellency's recommendation to the prayer of the petition.

I have, &c.,

D. DE LISLE BROCK,

*Bailiff of Guernsey.*

*To Major General Sir James Douglas, K.C.B.*

[The Court then adjourned.]

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Paper of Col. De Havilland on the Constitution of the Royal Court.

[The Commissioners have thought it more convenient to print the following paper, received from Colonel De Havilland, which relates wholly to the constitution of the Royal Court, in this place, in connection with other documents relating to the same subject.]

*The further Answers of Thomas De Havilland, Esq., Jurat of the Royal Court of Guernsey, to the first and second Questions of the first series of Questions proposed by the Commissioners.*

1*st Question.*—From 1810 to 1814, when Sir Peter De Havilland was Bailiff, I assisted him in his forensic occupations. I have always taken an interest in the constitution and laws of the Island, my birth-place. In 1836, being elected constable of my parish, I served the office till 1842, when I was elected Jurat, and took my seat on the Bench accordingly.

2*nd Question.*—The Royal Court only has criminal jurisdiction in the Island. Its constitution is of Norman origin, about the time, or probably a few years before, the conquest of England by William Duke of Normandy. It takes cognizance and disposes of all criminal cases, save only three, viz., high treason, false coining, and laying hands injuriously on the Bailiff or the Jurats while in the discharge of their office. These three cases, however, are to be tried by the Royal Court; and, if the party should there be found guilty, the award of punishment is then reserved to the Crown.

The constitution of the Royal Court had existed unaltered for a long and uninterrupted period, when King John lost Normandy: and, as the Islands continued under the laws and customs of that province, notwithstanding it had been lost to England, considerable confusion ensued, chiefly in consequence of the itinerant justices sent triennially from England being strangers to that jurisdiction. Writs of quo waranto were issued, questioning the right of the Islands to that constitution, and commissions of inquiry appointed to investigate the subject, and to examine into numerous petitions of complaint which arose out of that confusion. The most remarkable, probably, were those of A. R. 32 Hen. III., of A. R. 17 Ed. II., and A. R. 5 Ed. III. But, nevertheless, the constitution, customs and privileges of the Island were confirmed, not only by these commissions, but expressly by the royal charters of the subsequent Kings and Queens of England, all these confirmations being founded on the approved fidelity of the inhabitants, their liege subjects, after the loss of Normandy.

A question, however, has arisen, whether, at the separation of Normandy from England, the Island brought with it, as it were, its own constitution, or whether that which it now enjoys was expressly conceded to it by King John, when he lost that Duchy.

There is a document, commonly called the Constitutions of King John, extant, bearing no date, however, and of doubtful origin, being neither an original nor an authenticated copy of one. Nevertheless on this paper, imperfect as it is, rests the question of our constitution. It is, I believe, more generally considered to be the actual grant of the constitution itself; but some persons, and I among them, view the document rather as merely containing a declaration of a constitution already of long standing. I should say, however, that, constitutionally speaking, the question is but of small import, the constitution of the Island being the same in either case; but historically it is of more importance, since in the one case the origin of our constitution must have been at the commencement of the 13th century, and in the other towards the middle of the 11th century, a difference probably of 143 years.

Referring, then, to this document, I shall observe that on the face of it it bears no semblance, in point of form or diction, to a royal grant or charter, and that it is not met with, quoted *as such*, in any of the *inspeximuses*, or in the inquisitions or extents, or in any of the charters, confirming the privileges of the Island, of subsequent sovereigns, Kings and Queens of England; but that, on the contrary, it appears to be nothing more than a collection of constitutional articles, given in the *third person*, some or all of which are to be found, from time to time, in our royal charters and the *inspeximuses* of subsequent sovereigns, and in the several inquisitions made or extents taken by royal commissions or mandates.

I would next remark that there is a letter from Hen. III., in the 32nd year of his reign, addressed to the Governor of the Islands, dated 11th September, 1248, which seems to throw much light on the subject. He states that he had before ordered an inquisition to be made, "*de consuetudinibus et servitiis quæ Homines earumdem insularum facere consueverunt temporibus prædecessorum nostrorum, Regum Angliæ,*" but that the return he had received was "*minùs sufficiens.*" I shall here observe that I consider the pretended *Constitutions of King John* to be nothing more than the return made to this first royal mandate, which return, containing 18 articles, begins, "*Constituit duodecim coronatores juratos,*" &c. And then the King's letter goes on to say, "*Vobis mandamus quod per tot quot expedire videritis, et tales qui melius sciant et velint dicere veritatem, inde distinctè et exquisitè faciatis inquisitionem; simul quas et cujusmodi leges Dominus Johannes Rex, pater noster, instituit in insulis prædictis,*" &c. Now, to this second mandate the return made was a much more extensive document, commonly known as the Extent or Inquest of Henry III., made the following year, 1249, a most valuable muniment, but making no mention of the "*Constitutions of King John,*" or of the contents of the paper so called. Nevertheless it is believed that that paper might have accompanied this extent, as a schedule, though the extent contains no intimation to that effect; but at least the two documents are generally found together.

There is only one difficulty in the way to this conclusion, which is, that this *schedule*, if I may call it so, to distinguish it from the other, bears, in some copies of it, if not in all, this intitulation—"*Constitutiones et provisiones, constitutæ per Dominum Johannem regem, postquam Normania alienata fuit.*" But I consider this intitulation to be an interpolation, which may have been induced by a wrong view of the latter part of the mandate, "*leges Dominus Johannes Rex, pater noster, instituit.*" The "*leges*" here alluded to, however, seem by the Extent to have been nothing more than *regulations* regarding the ports, the fisheries, and the markets of the Island, possibly made by him when he held the Islands in appanage, as *Count Mortain,*

or of *Mortaigne*, from his father, Hen. II., and afterwards from his brother, Rich. I. If Hen. III. had simply alluded to what his father might have done, while King of England, he would not have spoken of his *predecessors*, in the plural number—"*prædecessorum nostrorum Regum Angliæ.*" He, on the contrary, it is very evident, wished to know the long established custom, the common law of the Island, *under all his predecessors, Kings of England.* And in this view the Precept of Assise in 1331 says, that we have enjoyed our privileges, "*pleinement et paisiblement d'empuis le conquest d'Angleterre,*" and not, as it is pretended, only from the reign of King John. Indeed, it can scarcely be supposed that, if King John had made any such special grant to the Islands, his son, succeeding him immediately, could have been ignorant of it some thirty years after! I would likewise remark that, if King John, after the loss of Normandy, had made the supposed grant of a constitution, it would have been in the usual form of a charter, with a preamble exhibiting the motives which had led him to adopt the measure. But there is one circumstance besides, which, I should say, would not have been omitted, namely, that the jurisdiction of the Court of Exchequer at Rouen over these Islands was thenceforth transferred to the King in Council in England; for, however that might seem to be a matter of course, it must have been therein mentioned.

The view thus taken of the subject seems to be, moreover, historically confirmed, to the end that we have enjoyed our privileges since the Conquest. Robert Duke of Normandy, the Conqueror's father, intending a descent on England, was driven by stress of weather on this Island, in 1031 or 1032. He found, then, no constituted authorities, but only some monks who had been expelled from certain reformed convents in Normandy. While the Duke tarried here, he gave them lands in eleemosynary tenure, and repaired their castle of defence. These monks, about twenty nine years afterwards, applied to the Conqueror for deliverance from the pirates who were destroying them and their property; and it appears probable that even then, in 1061, there were yet no constituted authorities, in *this* Island at least. William accordingly sent troops to their rescue: and these, with the aid of the monks themselves, drove away the enemy. Now it was that the Island seemed to have been first noticed, to any good purpose, by the Duke. He divided half of it into two equal fiefs, one of which he gave to the officer who had commanded the troops sent there, and the other to the Abbot of the *Mont St. Michel*, in Normandy, both with feudal jurisdiction. But, as the other half of the Island would have remained unadministered to, it must have been necessary to have a third court erected, and which, in order to hold jurisdiction over the other two, was probably entitled a *Royal Court*, a common distinction given to Courts holding the superior jurisdiction in a province, district, or bailiwick having more than one Court*; and this would agree with the *Précepte d'Assise*, which dates our jurisdiction from the Conquest.

I may here further observe that, if King John had given us a new constitution, he would doubtless have referred to some pre-existent jurisdiction to be superseded, and would probably have assigned some reason for the change; but nothing of the kind appears in the document alluded to, nor is there, I believe, any tradition of a constitution and jurisdiction having ever existed in the Island different from the present form.

This may also be a fit place to remark, that a Royal Court, as a superior and independent Court (this one, *quoàd* the Bailiwick), had, by the custom of Normandy, and in France generally, ex officio, the right, power and privilege of making ordinances and regulations, which privilege our Royal Court has, in point of fact, exercised from time immemorial, as may be traced as far back as our records go, more than three centuries; it being well understood, however, that such ordinances or regulations are not to militate against any existing law or established custom of the country. These powers have also been confirmed to this Royal Court, in the most ample manner, by Queen Elizabeth, in her Council, under date 11th March, 1568. The order directs "That all grants and confirmations of privileges, from the Queen's Majesty and her progenitors, shall be always inviolably observed, maintained and kept in force, with the credit of the Bailif and Jurats, to be obeyed in all their ordinances, made and to be made, for the good government, surety and quietness of the said Isle; and that no officer or minister of justice be at any time hereafter resisted, impeached or imprisoned, for executing the sentences, ordinances and constitutions aforesaid, but maintained and assisted, according to the laws, usages and ancient customs of the Isle." I may here observe that this paragraph had probably immediate reference to the complaints then made against the Governor, for having imprisoned some of the constables for carrying into effect the ordinances of the Royal Court.

I would say a few words relatively to the Commission issued A. R. 17 Ed. II., alluded to above. This was given, in the last year of his reign (when the affairs of the Island were in utter confusion, in regard to its constitution, and the administration of justice generally), to Sir Henry Spigurnell, as president, with three associates justices; the object of which was, not only to look into the merits of some twenty or thirty petitions of complaint from the inhabitants, as well against the itinerant justices as against the Governor and his officers, but also to examine some of the processes and judgments delivered by the said justices from time to time, finally to confirm or to reverse them.

Now we find the result of that Commission to have been, as regards the laws and privileges of the Island, that these were set forth before the Commissioners, the counsel for the Crown being present, as well as the Bailif and other officers of Otto de Grandison, the Governor, who were then all called upon to declare to the Commissioners all they had to say against those laws and privileges; but, being unable to gainsay them in any way, the Commissioners finally declared: "That the aforesaid community (of the Island) shall in future be governed by the

* Besides the several feudal Courts in the Island, the Court in Alderney and that in Sark hold of the Royal Court.

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same liberties and customs, and that the said community shall use and enjoy the aforesaid customs and liberties, saving always the right of our Lord the King to order otherwise."

And, with respect to the inquiry into previous processes and judgments of former itinerant justices, the Commissioners declared that, "Because it appears that, as well in the aforesaid record and process as in the judgment passed, errors have evidently been committed, it is decreed that the aforesaid judgment shall be reversed as erroneous, and entirely annulled, and that the aforesaid community shall continue in the same state, as to its laws and customs, in which it was before that judgment was passed."

An exemplification of this last valuable document was prayed for by the the Royal Court, and obtained of Philip and Mary, A. R. 1 & 2. The occasion for this application was in 1554, when there were disputes between the then Governor, Leonard Chamberlain, and the Royal Court, and that, to the end of settling them, a Commission had been appointed, under the presidency of Sir Hugh Pawlet, with three others, and which last Commissioners drew the line between the authority of the Governor and that of the Royal Court. The above exemplification, in Latin, is still extant among the records of the Island.

Four years after Spigurnell's inquisition, another Commission, dated 8th February, 1331, issued to the justices itinerant then in the Island, to draw up an extent of the Crown revenues, and to make some general inquiry touching the customs of the Island, which they did, with the aid of thirteen sworn men of the Island, who declared their knowledge thereof.

But in the same year, without the authority of a royal commission, the itinerant justices (Sir Robert de Norton and Sir William De La Rue) instituted a more elaborate inquiry into the "liberties, usages and ancient customs, used, held and observed in the Island of Guernsey, in all times in which memory of man doth not go contrary," and set them down to serve as a "precept of assise," and caused them to be written in the vulgar tongue of the Island, to the end, doubtless, of their being better understood by His Majesty's liege subjects. This was effected through the declarations of twelve honest men of each parish, and the testimonies of other trustworthy persons, ancient and well informed residents in the Island, and in the presence of the Royal Court, and of six notaries and tabellions public resident in the Island; which proceedings were afterwards submitted to Sir Henry Spigurnell and his associates, and likewise to Sir Robert de Scarbourg and his companions, all justices itinerant, and by all of them approved. Moreover, I would observe that it is in this valuable and authentic document that it is found declared, as aforesaid, that these liberties, usages and ancient customs had been enjoyed fully and peaceably since the conquest of England, by the liege men, subjects and inhabitants of the Island and their predecessors, and had since been ratified and confirmed by all the Kings of England up to the date thereof, and maintained peaceably in all times, without any opposition or hindrance whatsoever.

Now the liberties, privileges and ancient customs, referred to in these two last documents, may be said to be virtually and substantially the same as those confirmed by Spigurnell's Commission, and as those contained in the document called the *Constitutions of King John*. Nevertheless, they are never therein declared, not even in the last of them, to have been derived from that Sovereign; neither is his name ever mentioned in any of them. And hence I have concluded that the pretended title, viz., in Latin, "*Constitutiones et Provisiones constitutæ per Dominum Johannem regem postquam Normania alienata fuit*," is an interpretation irreconcileable with the intent and meaning of the body of the document itself. And it cannot be doubted that, if King John had, when he lost Normandy, not *given*, but only *confirmed* those liberties and privileges, in a royal charter, much subsequent trouble and confusion would have been spared. They would thus have been better defined, and transmitted to posterity in a more perfect manner and form; the itinerant justices would have better known how to proceed; Spigurnell and his associates would not have been called to reverse and annul their processes; and the people would not have been so vexed and harshly dealt with, from time to time, as they were until the Precept of Assise brought about order and consistency in the administration of justice.

TH. DE HAVILLAND,
*Jurat of the Royal Court of Guernsey.*

*Guernsey, July* 20, 1846.

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Inquisition of the 32 Hen. III., from the Records in the Tower of London.

Among the Records in the custody of the Master of the Rolls, pursuant to stat. 1 & 2 Vict. cap. 94, and preserved in the Tower of London, to wit, Inquisition of the 32nd year of the reign of King Henry the Third, No. 6, it is thus contained.

Henricus, Dei gratiâ Rex Angliæ, Dominus Hiberniæ, Dux Normanniæ Aquitaniæ, et Comes Andegaviæ, dilecto et fideli suo Drogoni de Barentyn, Custodi Insularum de Gereseye et Gernereye salutem. Quia, sicut satis didicimus, Inquisitio quam alias a vobis fieri fecimus de consuetudinibus et servitiis quæ homines earundem Insularum facere consueverunt temporibus prædecessorum nostrorum, Regum Angliæ, minus est sufficiens: vobis mandamus quod per tot quot expedire videritis et tales qui melius sciant et velint dicere veritatem [*itera*] tam inde distincte et exquisite faciatis Inquisitionem; simul et quas et cujusmodi leges dominus Johannes Rex, pater noster, instituit in Insulis prædictis. Et Inquisitionem illam sub sigillo vestro et sigillis eorum per quos facta fuerit nobis mittatis, et hoc breve. Teste me ipso apud Merleberge, undecimo die Septembris, anno regni nostri tricesimo secundo.

*On a separate skin of parchment sewed to the above writ.*

Inquisitio facta de servitiis, consuetudinibus et libertatibus Insulæ de Genereye, et legibus constitutis in Insulis per dominum Johannem Regem, per sacramentum Roberti Blun-

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del, Radulphi Burnel, Gilberti Malcuvenant, Ricardi de Capella, Radulphi de Haverland, Petri Gross, Radulphi Corneilloc, Willielmi Rohe, Willielmi de Egrenteis, Willielmi Vivier de Curia, Oliveri de Valle Gerardi, Willielmi Gocelin, Ricardi Herichie, Willielmi de Nigro Monte, Willielmi La Lowe, Ricardi Monachi de Castro, Jordani de Hamello, Willielmi Vivier Alii, Radulphi Paisant, Ricardi Bele, Ricardi Gube, Radulphi Thurstam, et Radulphi Pesant. Qui dicunt quòd medietas Insulæ de Gernereye est domini Regis et Militum et aliorum qui de eo tenent in Capite, alia medietas partita est inter Abbatem Sancti Michaelis de Periculo Maris et Robertum de Ver. Quarterium verò, quod Robertus de Ver tenet, vocatur terra comitis. Dicunt etiam quòd omnes qui tenent bovatas terræ rusticatas debent campipartum per annum de omnibus seminibus quæ renovant, exceptis capitalibus mesuagiis unde bladum donant, scilicet, duodecimam garbam, et eundem campipartum in propriis carettis cariare ad manerium domini Regis, et super tassos levare; et baillivi domini Regis debent blada tassare per regardum consuetum, scilicet, de qualibet bovata terræ unum Turonensem, absque culturis quæ dant campipartum. Sed non dant denarium de regardo predicto ad bladum tassandum. Et, cum per eosdem homines campipartum fuerit collectum cariatum et adunatum in manerio domini Regis, quilibet collectorum dicti bladi debet habere de dono domini Regis unum prandium et novem Turonenses, et debent denarii illi solvi de pannagio. Et si forte carettæ eorum fuerint fractæ non debent inde occasionari. Ex proprio suo debent tassos cooperire, et manerium custodire quousque clausum fuerit, et postquam clausum fuerit: Debent avenam pro custodia manerii, et ulteriùs inde non debent occasionari. Item debent de quâlibet domo duas gallinas. De porcis suis debent pannagium, scilicet, de quolibet porco qui habet ferulam furcatam, unum Turonensem, ad diem quo pannagium denunciatum et in foro clamatum fuerit; et nisi pannagium solverint antequam sol occubuerit porcum suum perdent, et dabunt quinque solidos Turonenses. Et, cum placuerit domino Regi vel baillivo suo blada sua triturare, ad placitum suum capient unum hominem ad grangiam gernarium et bateriam custodiendum, et habebit quolibet die unam arieatam straminis de viginti quinque garbis, et manducabit cum domino Rege diebus dominicis et duplicibus festis. Item debent melagium, scilicet, de quâlibet bovatâ terræ unum bussellum et duas denariatas frumenti, cum uno rescusso, ad parvum bussellum, et per rescussum illum rasum est bladum. Item, si placuerit domino Regi mittere bladum suum in Normanniam, scilicet, inter Montem Sancti Michaelis et Cesarisburgum et non alibi, navem et rectorem navis inveniet tempore pacis, et prædicti homines ad custum proprium invenient marinellos alios per quindecim dies, et, si ultra quindecim dies moram fecerint, erunt ad custum domini Regis; et ipsi marinelli habebunt excessivum navis de eodem blado. Item dicti homines debent cooperire septem molendina domini Regis de propriâ cooperturâ et latâ, et reficere et relevare maiseras molendinorum, et exclusas et ductus curare et reparare, molas ducere, et meremium cariare ad molendina reparanda: et baillivus domini Regis magnum meremium et molas inveniet cum ferris molendinorum. Eodem modo debent facere de grangiâ cum opus fuerit. Debent etiam in dictis molendinis bladum suum quietè molere per sextum decimum granum. Et, si molendina remaneant in manu domini Regis, ita quòd ad firmam non ponantur, prædicti homines tenenturi exitus molendinorum custodire ad custum proprium; et possunt et debent custodes illi remover de quindenâ in quindenam. Item in eâdem Insulâ sunt sex carucatæ terræ, quarum Prior Sancti Leufridi tenet tres carucatas, Willielmus Roheis unam carucatam, et in feodo de Aunevill sunt duæ carucatæ; quæ debent et solent, ad turnum suum, et secundum tenuras, prisones custodire: et possunt et debent prisones replegiari, nihil dando baillivo, nisi capti sint per harellam, vel pro feloniâ, sive pro pace infractâ, sive pro alio forisfacto contra coronam domini Regis. Sed tempore illo castella non fuerunt in Insulis. Item debent reddere per annum de bancâ et hogâ viginti solidos et novem denarios Turonenses. Sed modò decadunt inde singulis annis duo denarii de quadam domo quæ sita fuit in cimiterio, quam Episcopus prosternere fecit pro orduris in ea factis. Item dicunt quòd tempore domini Philippi de Albiniaco finem fecerunt cum eo pro brasio faciendo per quinquaginta solidos Turonenses per annum, et vocatur redditus ille Frocage; sed de redditu illo decadunt singulis annis tres solidi de feodo de Aunevill, quod dominus Rex dedit domino Willielmo de Chesneto. Item debent de Marisco de Orguill et de Hoga Geraldi viginti solidos Turonenses, et de feodo Faieti duodecim Turonenses, in festo Sancti Michaelis. Item homines totius Insulæ communiter debent singulis annis, sicuti pro auxilio, sexaginta et decem libras Turonenses: et per illas septuaginta libras quieti esse debent, et temporibus regum quieti esse consueverunt, de omnibus exercitibus tailliagiis, greveriis, et aliis occasionibus, nisi tantummodò quòd ibunt cum corpore ducis Normanniæ, si necesse fuerit, ad Angliam recuperandam. Item dicunt quòd omnes totius Insulæ homines consueverunt tempore pacis ferre in Normanniam, vel alibi, ad placitum suum, omnes denariatas suas vivas et mortuas, tam de mari quam de terrâ, ad vendendum, exceptis congris in tempore espelcationis, nihil inde dando; et potuerunt et consueverunt de jure, absque occasione, ire et redire per quemcumque portum voluissent in prædictâ Insulâ. Sed postquam Normannia alienata fuit, ex præcepto bonæ memoriæ domini Johannis Regis aliter provisum et constitutum fuit, sicut posteà monstratum erit. Tempus espelcationis durare debet singulis annis à Paschâ usque ad Festum Sancti Michaelis. Fiderunt etiam quando Espelkiatores mercatores et piscatores in unum non fuissent ad piscem vendendum vel emendum ad justum forum, quòd tunc electi essent duo piscatores fide digni ex unâ societate, et duo alii ex aliâ societate, ad piscem aliorum super fidem et sacramentum juste appretiandum. Hæc verò appretiatio facta fuit tempore domini Johannis Regis, tali verò modo quòd quidam ex quibusdam piscatoribus appretiabunt ad invicem piscem aliorum. Dicunt quòd piscatores possunt custodire congros suos per unam monteam vel unam retractam donec appretietur. Debent insuper communiter per Insulas quolibet tertio anno quamdam consuetudinem dare, et vocatur fumagium. Item dicunt quòd tempore Regis Henrici, patris Regis Johannis, Radulphus de

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Inquisition of the 32 Hen. III., from the Records in the Tower of London.

Walemunt tenuit assisas in Insulis, et terras tunc vastas feofavit, et ad redditum assedit, scilicet, singulis annis pro triginta solidis Turonensibus. Dicunt insuper, super fidem et sacramentum, si concessum est prædictis piscatoribus ire et redire cum piscibus et aliis denariatis suis per quemcumque portum voluerint, absque licentiâ et visu, quod dominus Rex, et omnes sui, maxima dampna singulis annis incurrent,—Insulæ quasi perditæ erunt,—Portus nihil valebunt,—Spelkeria omnino deperibit,—Libertates domini Regis minorabuntur,—Terræ inimicorum suorum meliorabuntur, et de bonis Insularum sustentabuntur,—et sic Insulæ et terræ domini Regis de omnibus bonis vastæ et vacuæ remanebunt.

Constitutiones et provisiones constitutæ per dominum Johannem Regem, postquam Normannia alienata fuit.

Imprimis instituit duodecim Coronatores Juratos ad placita et jura spectantia ad coronam custodienda. Constituit etiam et concessit, pro securitate Insularum, quòd Baillivus de cætero per visum dictorum Coronatorum poterit placitare, absque brevi, de novâ disseisinâ factâ infra annum; de morte antecessoris infra annum; de dote similiter infra annum; de feodo invadiato semper; de incumbramento maritagii. Et, pro tuitione et salvatione Insularum et castrorum, et maximè quia Insulæ propè sunt et juxta potestatem Regis Franciæ et aliorum inimicorum suorum, constituit et præcepit quòd omnes portus Insularum bene custodirentur; et custodes portuum constituisse præcepit, ne dampna sibi et suis evenissent. Insuper constitutum fuit quòd omnis navis extranea, quæ non fuisset de potestate suâ, et in Insulis applicâsset, daret de consuetudine unam marcam argenti. Sed post decessum domini Johannis Regis, ad petitionem domini Philippi de Albiniaco, dominus Rex Henricus, filius domini Johannis Regis inde relaxavit dimidiam marcam. Constitutum similiter fuit quòd omne batellum dictæ Insulæ portans piscem flotantem in Normanniam pro quolibet turno daret duodecim solidos; sed ad petitionem dicti Philippi medietas relaxata est per eundem dominum Henricum Regem. Eodem tempore salicio congrorum constituta fuit inter Festum Sancti Michaelis et Pascham; quam baillivi domini Regis posuerunt ad firmam, sicut Espelcationem; et salicio primò facta fuit et constituta pro piscatoribus qui piscem detulerunt inimicis domini Regis. Eodem tempore constitutum est quòd omnes mercatores de rebus, porcis, fileto, et aliis emptionibus suis, consuetudines dent de omnibus denariatis suis: sed gentes Insulæ de propriis nutrimentis quietæ sint. Item constitutum fuit et provisum, pro sustamento et proficuo castrorum et munitionis domini Regis et totius gentis Insulæ, quòd omnes piscatores per tres dies singulis septimanis convenissent in patriâ ad vendendum piscem suum, videlicet, omnibus diebus Martis, diebus Jovis et diebus Sabbati.*

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Placita de Quo Waranto Temporibus. Edw. I., II., & III. in Curia Receptæ Scaccarij Westm. asservata.

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INSULA DE GERNESEYE ET JERESEYE.

Placita de Quo Waranto coram Johanne de Fresingfeld, &c.

Pl'ita querelarū coram Johne de Fresingfeld & Willo Russel Justiciar' dni Regis assignatis in Insulis ad audiend querelas div'sor conquerenciū de Ministris dni Regis & Ottone de Grandisono in q'ndena Sci Johnis Bapt' anno regni dni Edwardi Reg' Angl scdo finiente.

FRESINGFIELD.

Gerner'. ss.

Cōitas huj Insule allocuta quâ lege utunt & p quam legem clamant deduci an videlt p legem Angl vl Normann' aut p speciales consuetudines eis p Reges concessas, &c., dicunt qd nec p legem Angl nec Normann' set p certas consuetudines in hac Insula usitat' a tempe quo memoria nō existit. Et dicunt qd ipi tent de indigenis huj Insule duodecim hōies jur' Regis, qui una cū Ballio Insule in absencia Justic' & una cū Justic' cum huc advenint debent judicare de omibz casibz in hac Insula qualitcunq emgentibz. Et ipi duodecī debent unà cum Justic' de hiis que coram eis fūnt in coī & unà cū Ballo de hiis que coram ipsis fūnt in absencia Justic' facere record, &c., licet post assisas scribi debet solummodo Justic' ad fac' venire record pl'itor huj Insule coram dno Rege cum necesse fūit.

Postea pdca Cōitas sum' fuit ad respondend dno Regi de plito quo waranto sine licencia & voluntate dni Reg' & pgenitor suor Regū Angl clam' here de seipis unam duodenam hōim jur' dno Regi qui judm & rerordū facient de omimod plitis agitatis & plitatis coram Ballis dni Reg' de Ins', et & coram Justic' ipius dni Reg' cum ad ptes istas venint tam de plitis corone dni Reg' q'm aliis plitis quibzcūq et & de contempubz & t'nsgr' fcis ipi dno Regi & corone & dignitati sue & curie sue & Ministris suis que quidem cognicoes & judicor reddicoes ad ipm dnm Regem & coronam & dignitatem suā & ministros suos p ipm ad hoc spalit deputatos & nō ad aliū mere spectant.

Et Will des Mareys qui sequit p dno Rege dic' p dno Rege qd ubi ab antiquo cū dns Rex qui p tempe fuit miserit Justic' huc ad itinand, &c. vl ad audiend & minand certa negocia, &c. Justic' illi solent pcedere ad judm jux' discrecoes suas nisi tantumodo in casibz totalr tangentibz Insulanos & tenuras suas adinvicem petitas de quibz iidem Justic' quibz consuetudines Insule sunt incognite petierunt avisamentū a xij. Jur' &c. auteq'm pcesserint ad judm &c. pdca Cōitas jam de novo p huj jur' suos volunt sibi attrahere juridiccoem regiam &c.

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* The above documents are the "letter and extent or inquest," mentioned by Col. De Havilland. They consist of a writ directing an inquest, and the return to it. The whole of the latter document is written on one skin of parchment; and, in the opinion of Mr. Hardy, the learned antiquary to whose immediate custody it is committed, is incomplete, another membrane long since lost having probably been at one time annexed to it. This may account for the absence of the other articles of the Constitutions contained in the copy printed in the Appendix to Falle's *History of Jersey*. See Appendix to the First Report, p. 72.

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in lesionem corone & dignitatis dñi Reg' &c. Et qđ ita est offert ꝟificare ꝑ dño Rege sicut cur' cons' &c.

Et Cõitas ven' & dic' qđ iꝑi & eoꝝ ꝓgenitores Insulani hic a tempe quo memoria nō existit semp usi fuꝛnt habendi xij. Jur' huj⁹ de seiꝑis qui eligi debent ꝑ ministros đni Reg' & optimates ꝑrie cū opus fuit sciłt post mortem uni⁹ eoꝝ alꝛ fidedignus similiter si quis eoꝝ convicꝛ fuisset a casu de falsitate loco suo debet alꝛ ꝟbstitui. Et debent jurare sine condicõe ad manutenend & salvand jura đni Reg' & patriortaꝝ. Et iꝑi xij. debent judicare de oĩibꝫ causis ꝓtis contemptibꝫ tᵃnsgr' feloniis fcis đno Regi ministris & cur' sue vicinis extᵃneis & aliis quibꝫcumq exceptis tant' casibꝫ nimis arduis sic'* si quis recesserit a fide đni Reg' vł man' injecit violenꝛ in ministros đni Reg' & emend ōim ꝑmissoꝝ ꝑdcis arduis exceptis debent iꝑi xij taxare. Dicunt & qđ si đns Rex velit ꝯtiorari de recordo ꝓtiti coram Justic' & iꝑis xij agitati Justic' unà cū illis xij debent record illud face set si diꝟsificent inꝛ eos tunc debent Justiciar' unà cū militibꝫ & magnatibꝫ assidentibꝫ cū eis in Banco ad ꝓtita face record huj⁹ Et de agitatis coram Baꝛio & iꝑis ħnt iꝑi recordū cōjunctim, &c. Et sic uti solet ab antiquo. Et qđ ita sit ꝑati sunt verificare.

Et Wiłts dicit ꝑ đno Rege qđ ꝑdci xij nūqᵃ' consueꝟunt ħre record nisi tantū in casu ut sectatores cur' Baronū, &c. Dicit enim qđ cū quis impłitans vł impłitatus coram Baꝛio & Jur' face velit attornatū hoc face nō potest nisi ꝑs adꝟsa ꝑsens fuꝛit qū fit attorn' sicut in cur' Baronū ubi si plenū record ħuissent ꝑut clamant possent iꝑi tam in absencia qᵃm ꝑsenc' ꝓtis attorn' recipe & receptū recordari. Dicit & q̄d ꝑdci xij cū veñint coram Justic' velint aꝛ recordari contᵃ partem aliquam qᵃm scđm id quod coram eis fuꝛit agitatū & ps allegaꝟit qđ ꝓtiti aꝛ se ħet qᵃm iꝑi recordantʳ & illud voluit ꝑbare cū effectu debet & solet ad hoc admitti quod nō fieret si xij illi plenū record ħuissent. Dicit & ꝑ đno Rege qđ aꝛ usitatū est coram Justic' qᵃm sicut iꝑi clamant quia dic' qđ cū quis cōvincat, coram Justic' de tᵃnsgressiōibꝫ ꝑ qua redimi debeat vł & contemptū fac' cur' đni Reg' in ꝑsencia Justic' iꝑi Justiciar' juxᵃ discrecõem suam inde ordinabunt & admittent finem iꝑis xij ad hoc nō vocatis. Et hoc dic' bn̄ pace corā Roƀto de Leisset & sociis suis nuꝑ Justic' itinerantibꝫ hic de Roƀto de Viner & ꝑlibꝫ aliis & coram aliis Justic' simiłr in casibꝫ consimilibꝫ. Dicit & q̄d ꝑdci xij jam de novo levantes consuetudines contᵃ statū corone đni Reg' & contᵃ sacrm suū ꝑpᵗum abusi sunt legibꝫ & consuetudinibꝫ Insulaꝝ ab antiquo ħitis & obtentis sic' de ꝓtibꝫ latronibꝫ captis cū manuope & aliis felonibꝫ & quasi innuñis latronibꝫ de diꝟsis latrocibꝫ indictatis & ꝑ magna ꝓte coram Baꝛio applegiatis ad ass' &c. quos iꝑi Jur' adjudicaꝟunt & consenꝟunt qđ de gra sua abjurarent Insulas in plena cur' Reg' & alibi ꝑ voluntate sua licet nūqᵃ' ad locum refugii deveñunt ubi ꝑ legem & consuetudinem Insulaꝝ nullus deƀ Insulas abjurare nisi tantum illi qui deveñunt ad refugiū ecclie. Et sic concedunt felonibꝫ pdonacoem de amissione vite & membroꝫ qđ nulli licet nisi soli Regi. Dicit & qđ ꝑdci xij ꝟbornaꝟunt ꝑdcm Roƀtm de Leisset & soc' suos Justic' qđ quedam Alicia Alianor capta ꝑ receptamento Matiłt Loer que Insulas abjuraꝟat & ducta coram iꝑis Justic' & inde convicta juxᵃ tesꝛum iꝑoꝫ xij de consuetudinibꝫ suis abjur' Insulas ut sic ꝑ fcm Justic' maliciam suam ꝓpᵗam possent palliar'. Et nullus de cõitate contᵃ dixit, &c. nec in aliquo reclamavit. Unde petit judm de oĩibꝫ, &c. Dicit & qđ ꝑdci xij cōjuncūtʳ in hiis assis' de qᵃmpłibꝫ huj⁹ abjuracõibꝫ quas fieri fecunt & ꝓmiserunt coram iꝑis fieri exᵃ locū refugii. Et & qđ adjudicaꝟunt inquis' iꝛato capi sup indictatis de feloniis & sic indictati coram iꝑis quietati sunt contᵃ legem & consuetudinem &c. Unde dedice nō possunt quin legibꝫ & consuet' Insular' totaꝛ abusi sunt. Et petit judm ut pᵗus, &c. Dic' & qđ Cõitas hic nō utitʳ ad ꝑsens antiquis consuet'. Dic' enim qđ manifestū est qđ oĩes Insulani sunt uni⁹ & ejusđ lingue & tēpe quo ducat⁹ Norman' ħuit ducē fuꝛnt Insule ducis illius et qociens Insulani faciunt ꝓquisitū a cur' đni Reg' semp ad eoꝝ suggestionē scribitʳ scđm legem & consuet' Insulaꝝ & sic patet qđ in oĩibꝫ hiis Ins' debet esse una lex & una consuetudo. Et dic' qđ Insulani hic ꝑ voluntate sua assumpserꝛ sibi ꝑ lege & consuet quedam quibꝫ utuntʳ que oĩno discordant legibꝫ & consuetudinibꝫ aliaꝝ Insulaꝝ & hoc tam in lege de her' de dote & corona de ponder' & mensur' qᵃm de cons' & custumis que quasi totalʳ contrariantʳ seu discordant unde narrare infinitū. Et hec oĩa dic' se ꝓtum esse ꝟificare ꝑ đno Rege, &c. & petit judm. Dic' & qđ plibꝫ modis aliis abutuntʳ &c. quia dic' qđ ubi Baꝛis Insule quociens viderit expedire faciet inquis' suas ꝑ xij iꝑi suadent Justic' adveñnt qđ ꝑ sacrm vj ẽm in una Inquiscõe debent ꝓcedere ad inquirend de felon' & juribꝫ đni Reg' qđ õio discordat legi. Dic' & qđ simiłr suadent iꝑis Justic' qđ indictatores debent amoꝟi ex offico Justiciarioꝝ cū indictat⁹ se ponat in inqⁱsicõe licet indictat⁹ excepcõem aliquam nō ħuerit ꝟsus eos ponentes ꝑ causa ne judicatores incurrant infamiam ꝓjurii si indictatū qⁱetarent cū ꝛm jurent juxᵃ conscientias. Unde petit ꝑ đno Rege qd ꝑmissa corrigantʳ &c.

Et Cõitas bn̄ cogn' qđ nullus deƀ abjurar' Insulas nisi loco refugii & recognoscens felon' cogn' & qđ lex & consuetudo quibꝫ utuntʳ discordant aliis sic' ꝑdcm est. Et dicunt qđ cū quis tᵃnsgᵉdiatʳ puniendus est tᵃnsgressor & eoꝝ tᵃnsgressiones nō debent imputari Cõitati. Dicunt & qđ ꝓati sunt ꝟificare sicut cur' cons' qđ ꝓgenitores eoꝝ Insulani hic usi fuꝛunt lege & consuetudne quibꝫ iꝑi clamant uti &c. Dies datus est eis de audđ judio suo coram đno Rege a die Scꝯi Micħis in unū menꝭ' ubicumqꝫ &c. Et Cõitas po. lo. suo Ricm le Herice Joħem de Vivario vł Henr' Trente. Postea ad diem illū apud Westm' ven' ꝑdca Cõitas ꝑ attorn' suū. Et ꝯtis de causis datᵒ est eis dies de judo suo audđ coram đno Rege a die Pascħ in unū mensem ubicūqꝫ tūc fuꝛit in Angł. Ad quem diē ꝑdca Cõitas ꝑ attorn' suū ven' ꝛ datᵒ est eis dies corā đno R. a die Pascħ in unū mensem ubicūqꝫ &c. Ad quē diem ꝑdca Cõitas ꝑ attorn' suū venit ꝛ ꝯtis de causis datᵒ est eis dies a die Pascħ in xv dies ubicumqꝫ &c, Ad q' diem ꝑdca Cõitas ven' ꝛ ꝯtis de cāis datus est eis dies a die Pascħ in unū mensē ubicūqꝫ &c. Ad quem diem ꝑdca Cõitas ven' ꝛ ꝯtis de cāis datus est eis dies in crastino āiaꝝ ubicūqꝫ &c. Et deinde datus est eis dies a die Pascħ in unū mensem ubicūqꝫ &c. in crastino anmaꝝ ubicūqꝫ &c.

* This appears to confirm the conjecture as to the incorrectness of the ordinary reading in the Constitutions of King John. See the First Report, page xv.

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Ad q' diē ꝑdca Cõitas ven' ⁊ ℭtis de cāis ut p'us datus est dies a die Pasch̄ in unū mens' ubicūq; &c. Ad quē die ꝑdca Cõitas ven' ⁊ ℭtis de cāis ut p'us datus est a dies eid̄ Cõitati a die Pasch̄ in tres sept' ubicūq; &c. Ad quem diem ꝑdca Cõitas ven' ⁊ ℭtis de causis ut prius datus est dies eidem Cõitati a die Pasch̄ in xv dies ubicūq; &c. Ad quē diē ꝑdca Cõitas ven' et ℭtis de cāis dat⁹ est dies eidem a die Pasch̄ in q'nq; sept^is p̄x̄ futur' in unū annū ubicūq; &c.

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Among the Records of the Public Record Office in the custody of the R. H. the Master of the Rolls, pursuant to the Statute 1 and 2 Vict. c. 94, to wit.

Placita coram Henrico Spigurnel et Willielmo de Denum, Justiciariis domini Regis ad audiendum et terminandum assignatis apud Gernereye, die Jovis in crastino Sancti Mathei Apostoli, anno regni Regis Edwardi filii Regis Edwardi xvij°

Placita coram Henrico Spigurnel, &c.

Spigurnel.

Gernereye—Dominus Rex assignavit Henricum Spigurnel et Willielmum de Denom Justiciarios suos ad quædam Recorda et processus recitanda, et errores in eis corrigendos, et ad inquirendum de terris et tenementis, homagiis, servitiis, advocationibus, wrecco maris, warrennis, chaciis, custumis, esparkariis et aliis libertatibus usurpatis et detentis, et de subtractionibus libertatum et jurium domini Regis, per breve suum patens, in hæc verba.

Edwardus, Dei gratia, Rex Angliæ, Dominus Hiberniæ et Dux Aquitaniæ, dilectis et fidelibus suis Henrico Spigurnel, Magistro Henrico de Clif, Johanne de Ifeld, et Willielmo de Denum, salutem. Sciatis quòd cum nuper, dato nobis intelligi quòd diversæ terræ et tenementa, cum homagiis et servitiis, advocationibus ecclesiarum et capellarum, eschaetis, wreccis maris, warrennis, chaciis, custumis makerellorum, esparkeriarum, coungrorum, et aliis libertatibus diversis, quæ ad nos pertinent, et de jure pertinere debent, in insulis nostris de Gernereye, Jereseye, Serk et Aureneye, per quosdam homines et habitatores insularum prædictarum, religiosos, et alios, tam tempore domini Regis Henrici avi Regis nostri, quam tempore domini Edwardi Regis patris nostri, et nostro, usurpata fuerunt indebitè et detenta, et aliæ diversæ subtractiones libertatum et jurium nostrorum in partibus illis, ac purpresturæ similiter factæ fuerunt ibidem, in nostrum præjudicium et exhæredationem nostram manifestam: indempnitati nostræ prospicere volentes, assignaverimus Johannem de Fresingfeld, Willielmum Russel, Johannem de Dittone, et duos eorum, ad inquirendum per sacramentum proborum et legalium hominum insularum prædictarum, per quos rei veritas melius sciri posset, de hujusmodi terris et tenementis, homagiis, servitiis, advocationibus, wreccis maris, warennis, chaciis, custumis, esparkeriis, et aliis libertatibus sic usurpatis et detentis, ac etiam de subtractionibus libertatum et jurium nostrorum prædictorum, et purpresturis prædictis, pleniùs veritatem; et per quem, vel per quos, et à quo tempore, et qualiter, et quo modo; et ad omnia sic usurpata, detenta, et subtracta, ad statum debitum revocanda. Ac postmodum ex querelâ quorumdam Insulanorum insularum prædictarum, et per petitionem suam coram nobis et consilio nostro in parliamento nostro exhibitam, accipientes quòd in recordis et processibus coram præfatis Justiciariis nostris super præmissis habitis, quæ coram nobis certis de causis venire fecimus, errores intervenerunt manifesti; ita quod, si prædicta recorda et processus executioni demandarentur, in ipsorum Insulanorum exhæredationem cederent manifestè: Et quòd quidam ballivi et ministri insularum prædictarum, per dilectum et fidelem nostrum Ottonem de Grandisono Custodem insularum earumdem, in ipsis insulis deputati, injurias, transgressiones, extortiones, oppressiones, dampnaque diversa, voluntariè et absque causâ rationabili eis multipliciter intulerunt, in ipsorum Insulanorum depressionem et depauperationem manifestam; ac volentes errores, si qui in dictis processibus intervenissent, modo debito corrigi, et eisdem Insulanis de injuriis, transgressionibus, oppressionibus, extorsionibus et dampnis prædictis, fieri justiciæ complementum, assignaverimus dilectos et fideles nostros Johannem de Stonore, Willielmum de Bourne, Nicholaum de Cheny, et Johannem de Carteret, tres et duos eorum, Justiciarios nostros ad recorda et processus prædicta, quæ eis misimus sub pede sigilli nostri, recitanda, et errores, si qui intervenissent in eisdem, corrigendos, necnon ad inquirendum, per sacramentum proborum et legalium hominum insularum prædictarum, de injuriis, transgressionibus, extorsionibus, oppressionibus et dampnis, in petitionibus Insulanorum prædictorum contentis, quas similiter eis misimus sub pede dicti sigilli, pleniùs veritatem; necnon ad querelas omnium et singulorum de ballivis et ministris prædictis, de toto tempore quo dictus Otto custodiam ipsarum insularum habuit, conqueri volentium, audiendas et terminandas, et partibus inde celerem justiciam faciendam secundum legem et consuetudinem insularum prædictarum. Postmodùm vero, dato nobis intelligi quòd prædicti Willielmus, Nicolaus, et Johannes Carteret, formam commissionis nostræ prædictæ eis factæ excedentes, diversa maneria, terras et tenementa nostra, in dictis insulis, quibusdam Insulanis earumdem insularum ea petentibus adjudicaverant, et, quòd tam in recordis et processibus coram eis habitis quam in redditione judiciorum eorumdem, diversi et intollerabiles errores intervenerant, in nostri exhæredationem et præjudicium, et ipsius Ottonis ac diversorum aliorum grave dampnum: volentes indempnitati nostræ prospicere, et errores illos, si qui essent, modo debito corrigi et emendari, eadem recorda et processus, cum omnibus ea tangentibus, unà cum recordis et processibus, petitionibus, et aliis quæ præfato Willielmo priùs transmisimus, venire fecimus coram nobis; quibus coram nobis in curiâ nostrâ recitatis et diligenter examinatis, et aliquibus de judiciis illis contra nos redditis modo debito adnullatis, et aliquibus emendatis, quibusdam verò, tam præfatum Ottonem quam quosdam ministros suos tangentibus, propter difficultates aliquas, non valentibus extra insulas prædictas commodè terminari: Nos, volentes errores prædictos, qui nondum coram nobis emendati fuerunt, modo debito corrigi et emendari, ac tam pro nobis quam pro præfato Ottone, necnon pro Insulanis prædictis, de injuriis, transgressionibus, oppressionibus, extorsionibus et dampnis hujusmodi conqueri volentibus, fieri justiciæ complementum, assignavimus vos, tres et duos vestrûm, Justitiarios nostros ad recorda et processus prædicta, quæ vobis mittimus sub pede sigilli nostri, recitanda, et errores, si qui in eisdem intervenerint, corrigendos, necnon ad in-

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quirendum per sacramentum proborum et legalium hominum insularum prædictarum, per quos rei veritas melius sciri poterit, de hujusmodi terris et tenementis, homagiis, servitiis, advocationibus, wreccis maris, warennis, chaciis, custumis, esparkariis et aliis libertatibus sic usurpatis et detentis, ac etiam de subtractionibus libertatum et jurium nostrorum prædictorum, et purpresturis, quæ in dictis recordis et processibus non continentur, pleniùs veritatem, et per quem, vel per quos, et a quo tempore, et qualiter, et quo modo; et ad omnia sic usurpata detenta et subtracta ad statum debitum revocanda; et ad querelas omnium et singulorum de ballivis et ministris prædictis de toto tempore quo dictus Otto custodiam insularum predictarum habuit, conqueri volentium, de quibus justicia antea facta non fuit, audiendas et determinandas, et partibus inde celerem justiciam faciendam, secundum legem et consuetudinem insularum prædictarum. Et ideo vobis mandamus quòd ad certos dies et loca, quos vos, tres vel duo vestrûm infra insulas prædictas ad hoc provideritis, præmissa omnia et singula faciatis et expleatis in formâ prædictâ, facturi inde quod ad Justiciarios pertinet secundum legem et consuetudinem insularum prædictarum, salvis nobis amerciamentis et aliis ad nos inde spectantibus. Mandavimus enim Custodi nostro insularum prædictarum, qui nunc est, vel qui pro tempore fuerit, vel ejus locum tenenti, quòd ad certos dies et loca, quos vos, tres vel duo vestrûm infra, insulas prædictas ei scire faciatis, venire faciat coram vobis, tribus aut duobus vestrûm, tot et tales probos et legales homines de insulis prædictis, per quos rei veritas in præmissis melius sciri poterit et inquiri, necnon omnes illos, quos prædicta negotia contingunt et per quos præmissa meliùs poterunt expediri. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Cowyk xxix die Julii anno regni nostri decimo septimo.

Prætereà dominus Rex mandavit præfatis Justitiariis hic recordum et processus coram Willielmo de Bourne et sociis suis, nuper Justitiariis domini Regis, in eisdem insulis habita, unà cum brevibus, petitionibus et aliis ea tangentibus, sub pede sigilli, in formâ quæ subsequitur.

Cum nuper Communitas insulæ de Gernereye coram domino Rege et ejus consilio diversas petitiones, tam de erroribus coram Justitiariis domini Regis ibidem missis contra leges ejusdem Communitatis et consuetudines factis, quam de transgressionibus, gravaminibus, extorsionibus et dampnis multimodis, per ministros domini Othonis de Grandissono tenentis insulas prædictas, ut dicitur, ad terminum vitæ suæ, eidem Communitati multipliciter illatis, secuta fuisset, ut sibi de prædictis erroribus aliisque gravaminibus remedium fieret oportunum: ac dominus Rex, ad eorum petitiones, Willielmum de Bourne, Nicholaum de Cheigne, et Johannem de Carteret, Justitiarios ibidem mittendos præcepisset, coram quibus prædictæ Communitatis homines venerunt, et dictum est eis per Justitiarios prædictos quòd prædicta errores et gravamina coram eis assignarent, ac etiam pro dictâ Communitate declararent. Et ipsi per quosdam servientes dicunt quòd ipsi et omnes antecessores eorum, Insulani insulæ prædictæ, de lege et eorum consuetudine à tempore quo non extat memoria usitatis, habere consueverunt duodecim Juratos de se ipsis, qui eligi debent per ministros domini Regis et optimates patriæ, cum opus fuerit, scilicet, post mortem unius eorum, alter fidedignus loco ejus eligi debet. Similiter si quis eorum convictus fuerit à casu falsitatis loco sui debet alter substitui. Et debent ipsi duodecim jurare sine conditione, sed tantummodo ad manutenendum et salvandum jura domini Regis et patriotarum. Et ipsi duodecim debent judicare de omibus causis, placitis, contentionibus, transgressionibus, feloniis et aliis quibuscunque factis vicinis et extraneis, exceptis tamen casibus nimis arduis, videlicet, de injectione manuum in servientes et ministros domini Regis, more debito officium suum exercentes, et de hiis qui à fidelitate domini Regis tanquam proditores recedunt. Et ipsi duodecim Jurati debent emendas omnium præmissorum, prædictis arduis exceptis, taxare. Et, cum Justitiarii per præceptum domini Regis ad assisas capiendas vel quæcunque placita Itineris vel quæcunque alia placita audienda et terminanda ibidem venerint, debent ipsi duodecim Jurati eis associari, quamvis dictorum Justitiariorum commissio inde non faciat mentionem, ut de eorum consuetudinibus Justitiarii prædicti certiorentur; cum quibus iidem duodecim Jurati debent de omnibus prædictis judicare. Et, si dominus Rex velit certiorari de recordo placiti coram Justitiariis et ipsis Juratis agitati, Justitiarii unà cum illis duodecim debent recordum illud facere. Et de agitatis coram Ballivo et ipsis Juratis, habent ipsi recordum conjunctim, sicuti solent ab antiquo. Et quòd nullus de libero tenemento suo, quod per annum et diem pacifice tenuit, sine brevi domini Regis de Cancellariâ, tenetur respondere, et de tenemento et tenente expressam faciente mentionem. Et quòd nullum placitum infrà insulam prædictam coram quibuscunque Justitiariis agitatum vel inceptum debet extrà insulas prædictas terminari seu ajornari, sed ibidem, secundum legem eorum et consuetudinem, terminari. Et quòd residentes in insulâ prædictâ plegios de prosequendo querelas suas non tenentur invenire, nisi sint extranei in insulâ prædictâ non habentes unde possent, si necesse foret, pro emendis domini Regis distringi. Et quòd amerciamenta coram præfatis Justitiariis emergentia debent ipsi Justitiarii, per consilium et assensum dictorum Juratorum, et unà cum ipsis Juratis, qui qualitatem personarum et quantitatem delicti noverunt, taxare. Et quòd Præpositus domini Regis per prædictam Communitatem ad officium præposituræ dictæ insulæ eligi debet. Et quòd tenentes domini Regis debent invenire dicto domino Regi unum Grangiarium quolibet anno, qui eligi debet per semetipsos et per Ballivum patriæ et Juratos. Et quòd nullus debet arrestari pro altero extraneo, nisi sit vadius et plegius ejus, vel quòd ipse tres querimonias modo debito gesserit loco ejusdem alicui: et nisi idem dictas querimonias rite portaverit quartâ vice: si contingat eum ad patriam accedere, debet ipse pro prædicto extraneo arrestari ad respondendum querenti. Et quòd nulli felones aliquid forisfaciant præter sua bona propria de quibus possessionem habent tempore et die quibus pro delictis suis puniuntur. Et quòd nullus dampnatus extra insulas pro feloniâ vel aliâ causâ nihil in insulis hæredibus suis forisfacere potest. Et si aliquis forisfacit et adjuret insulas, et postea dominus Rex ex suâ gratiâ ei pacem suam concedat infra annum et diem abjurationis suæ, et idem revertatur ad insulas, de hæreditate suâ plenariè restituetur, de quâ plenariè seisitus fuit tempore suæ adjurationis. Et quòd nullus, ratione debiti domini Regis vel aliorum, tam graviter distringatur, quin medietas terræ suæ de quâ ipse cum

(verte a tergo de eadem materia.)

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familia sua vivere possit, ei tamen remaneat. Et quòd namia debent poni in locis ydoneis, ita quod illi quorum namia sunt possint eis dare ad manducandum et bibendum, et debent observari penes bordarios pro debito domini Regis. Et quòd animalia quæ dant lac pro alimento puerorum, et bestiæ ad colendam terram, capi non debent in districtione, tamdiu quam alia namia inveniantur. Et quòd nulla inquisitio, quæ in dictis insulis vulgariter Harela nuncupatur, debet fieri nisi in assisis, quæ debent esse de triennio in triennium, nisi solummodò ad sectam partium. Et quòd nullus debet retardari de suo debito ob domini Regis debitum, ubi offert solvere certum debitum redditûs dicti domini Regis pro habendo bona debitoris, neque similiter aliquis aliorum dominorum debet retardare debitum alterius nisi sit propter debitum proprii sui redditûs. Et quòd nullus debet poni in gehenam, sed debet deduci secundum consuetudinem et delicti qualitatem. Et quòd Ballivus qui tenet Curiam domini Regis, vel Præpositus qui debet colligere emendas seu amerciamenta Curiæ, non debet emolumenta hujusmodi amerciamentorum emere, ne aliquis hâc occasione prægravetur. Et quòd bussellus melagii domini Regis non debet continere pretio quinque denerellos absque excussiâ, et debet idem bussellus excuti pro perficiendo defectum quem grangiarius debet adimplere, et debet idem habere residuum. Et quòd nullus custumarius quærat custumas de navibus per mare circa insulas transeuntibus, nisi sint ad ancoras suas positæ. Et quòd naves, quæ custumas suas solverunt, cujuscunque regni extiterint, et sint de pace domini Regis Angliæ, applicatæ in ancoradio domini Regis ejusdem insulæ super ancoras suas, et ibidem casu fortuito se impejoraverint, possint ad terram domini Regis in dictis insulis pro se ipsis reparandis libere et absque calumpniâ applicare. Et, si aliquis implacitatus fuerit in Curiâ domini Regis, vel aliorum dominorum, ab aliquo actore, et idem implacitatus tractatus sit ad emendam propter hoc, eâ die non debet ire sine responsione nec suæ malitiæ commodum reportare. Et quòd illi qui clamant Harou, vel clamari faciunt, debent illud Judicibus domini Regis nunciare, et etiam apportare, et ipsi Judices secundum conquestum vel clamorem debent procedere, et non ultra, nisi sit in casu criminali. Et si illi, qui audiunt dictum clamorem de Harou, ad dictos Judices non apportaverint, propter hoc in aliquo gravamine non debent permanere, quomodocunque aliquo tempore usum fuerit. Et quòd namia capta pro debito, cujuscunque conditionis existat, morari debent per novem dies super feodum gentilium hominum, si capti sint ibidem, et postea debent per tres dies Sabbati continuos duci ad mercatum pro vendendo; debent illi quibus namia sunt ad hoc ad quemlibet dierum Sabbati sufficienter summoniri, et ad quartum diem Sabbati curret per summonitionem venditio namiorum, computato tamen uno die Sabbati infra novem dies supradictos. Et quòd emendæ Curiæ domini Regis non debent duplicari, nisi in itinere Justitiariorum vel assisarum. Et quòd nullus debet imprisonari in Castro, nisi per respectum Juratorum, et pro casu criminali vitam vel membrum tangenti, set in aliis liberis prisonibus ad hoc antiquitùs deputatis, videlicet, feodis de la Refraerie, des Roeys, et de Gaseans. Et quòd debitores patriotæ se debent acquietare versus dominum Regem, et alios dominos suos, ad talem monetam qualis currit in Ducatu Normaniæ: et propter hoc debent solvere quemdam redditum domino Regi de triennio in triennium, qui in partibus illis fumagium seu monetagium nuncupatur. Et quòd dominus Rex non debet habere neque levare majus pretium de frumentis suis redditûs, quam secundum taxationem quæ facta fuerit per Juratos in Curiâ domini Regis insulæ memoratæ. Et quòd quilibet patriota debet quietus esse versus dominum Regem de omnimodo guerræ exercitu, et equitatu, et eydagio, et de omnimodo talliagio, nisi solummodò si corpus domini Regis, quod absit, in prisonâ detinetur, nec debet exire extra patriam pro nullimodis placitis; et propter hoc debent ipsi patriotæ dicto domino Regi quemdam annuum redditum qui vocatur auxilium domini Regis. Et quòd campipartes domini Regis ad grangiam duci et apportari debent, pro tenendo locum communi populo, qui ad victum suum et bestiarum suarum de bladis et foragiis hujusmodi pro denariis suis emunt; nec debet aliquis compelli ad emendum campipartem suam, nec de campipartando blada sua, dum tempus affuerit, ullo modo per maliciam debet retardari. Et quòd quædam obligationes, quæ in partibus illis regales literæ appellantur, nullius valoris debent esse alicui, nisi solummodò gentibus alienis, et hoc in lege mercatoriâ absque hæreditagio: et si virtute earumdem literarum alicui tenementa seu hæreditagia soluta fuerint vel liberata, clamat Communitas quod ea sint in statum pristinum revocata ad prosecutionem eorum qui super hiis conqueri voluerint, secundum legem et consuetudinem insulæ supradictæ. Et quòd nullus in castro imprisonari debet virtute literarum prædictarum. Et quòd Clericus Curiæ domini Regis non debet amerciamenta sive emendas colligere, sed Præpositus qui electus est per patriæ communitatem. Et quòd nullus Custos insularum prædictarum, Ballivus, Receptor, vel curiæ regis Clericus, debet esse communis tabernarius seu mercator. Et quòd atabernatores debent poni ad afforandum seu attabernandum vina et cervisiam per respectum Juratorum. Et mensuræ et pondera liberari debent alicui seu aliquibus fidedignis per respectum Juratorum et Ballivi. Et quòd firmarii molendinorum de multurâ suâ aliquem calumpniari non debent, nisi de anno et die quibus dicta molendina tenuerunt. Et quòd terræ communs Communitatis, quæ dicitur communia domini Regis, quæ ad redditum jam nuper traditæ fuerunt in præjudicium domini Regis, ad dampnum populi manifestum, et contra consuetudinem, sint ad statum pristinum revocatæ; quia prædictus dominus Rex non debet aliquod habere in eisdem, nisi solummodò emendas suas inde assisas, sed semper debent esse communes, prout dominus Rex eas antiquitùs condonavit. Et quòd vendentes pisces in Quadragesimâ, et aliis temporibus, in tribus certis locis ab antiquo consuetis eos vendant, et non alibi, et ibi morentur usque ad certam horam ab antiquo consuetam, donec qui voluerint emere super eo habeant ad usus suos sufficientiam, et maximè tempore Quadragesimæ quod si aliter fecerint graviter per amendas puniantur. Et quòd quilibet tempore siccariæ, quæ durat a festo Paschæ usque ad festum Sancti Michaelis, pisces potest sumere ad usum suum pro dietâ virides vel siccos in dictis esperkeriis vel de piscatoribus ad forum mercatorum. Et quòd, si aliqui capti fuerint pro cuniculis domini Regis, vel accusati, sunt audiendi ad eorum purgationem, si hoc petant, et in crastino (*? castro*) domini Regis ob hoc non debent imprisonari. Et quòd non licet alicui verecum adunare ante ortum solis, nec post ejus occasum, propter provenientia ad verecum domini Regis fidelius

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observanda. Et quòd non licet alicui Receptori extractas amerciamentorum erga se recipere de amerciamentis curiæ domini Regis, nisi in eisdem extractis causa sufficiens se (*? sit*) contenta. Et Johannes de Fresingfield et socii sui, Justiciarii itinerantes domini Regis, sine brevi domini Regis de cancellariâ, per breve suum proprium plures de Communitate ad breve quo waranto de liberis tenementis suis, quæ à tempore quo non extat memoria pacificè tenuerunt, coegerunt ad respondendum, et de consuetudinibus suis prædictam Communitatem extra eandem insulam in Angliam contra consuetudinem suam ajornaverunt, et quamplurimos insulanos in castro, sine assensu Juratorum, contra consuetudinem suam absque rationabili causâ imprisonari fecerunt, et fere omnes habitatores insulæ ad graves emendas, sive potiùs redemptiones, sine rationabili causâ, seu assensu Juratorum, contra eorum consuetudinem et (*? in*) oppressionem totius populi amerciaverunt, et quemdam Robertum le Gay, eorum Servientem, rationes eorum et prædictæ Communitatis consuetudines allegantem, in prisonam mitti præceperunt, et ibidem diù detineri fecerunt, et eidem Communitati multa alia injustè et contra eorum legem et consuetudinem intulerunt. Quare petit prædicta Communitas super hiis sibi remedium fieri secundum legem et consuetudinem insulæ supradictæ. Item queritur prædicta Communitas quia, cum novæ ordinationes vel statuta in terrâ domini Regis sine ipso domino Rege vel ejus consilio fieri non debeant, quidam Petrus Le Petitfe, Philippus Leveske, Robertus de Haddy, Willielmus Lengignour, Willielmus Le Petit, et alii ministri domini Othonis de Grandisono, postquam idem Otho insulas istas ad terminum vitæ ex concessione domini Regis habuit, ut dicitur, quoddam sigillum, simile privato sigillo domini Regis, fieri fecerunt, ipsum nominando Sigillum Ballivæ, per cujus testimonium multi homines Regis ibidem pluribus creditoribus in diversis debitis se obligârunt, et cùm, termino statuto, de prædictis debitis, non satisfecissen, prædicti ministri semper hucusque eos per eorum corpora attachiari et in castro domini Regis imprisonari fecerunt, per quod multas hæreditates suas vendiderunt, et hæredes suos inde exhæreditaverunt, in magnum præjudicium totius Communitatis prædictæ, et contra eorum legem et consuetudinem. Quare petit prædicta Communitas inde remedium &c. Et, eâdem die Jovis prædictâ, quidam Thomas de Estfeld duodecim rotulos prædicti Johannis de Fresingfeld sociorumque ejus, simul cum decem et octo petitionibus sive cedulis, eisdem Willielmo et Nicholao sub pede sigilli domini Regis liberavit, in præsentiâ duodecim Juratorum Regis, videlicet, Johannis de Vivario, Johannis Le Moigne, Henrici de Wik, Henrici de Waugerard, Radulphi Tulley, Petri la Cornaille, Ricardi Bernard, Petri Bernard, Michaelis Lescuruel, Nicholai Burnel, Nicholai Blundel, et Willielmi Gros et aliorum quamplurimorum. Quarum quidem petitionum sive cedularum octo de prædictis erroribus et gravaminibus faciebant mentionem; et petiit idem Thomas prædictæ Communitati in hâc parte fieri remedium, secundum legem &c. Et tunc prædicti Justiciarii quæsierunt a prædictâ Communitate qualiter prædictas consuetudines verificare velint, quas habere debeant; quæ Communitas dicit—per recordum Juratorum domini Regis prædictorum, qui recordum habent in hâc parte. Quæsitum est a Juratis, in eorum pericula, ita quòd Rex per eos non exhæredetur, si in prædictis recordari debeant quòd prædicta Communitas prædictas consuetudines et libertates, ut de jure suo, habere debeant, et si antecessores sui seisiti de eisdem, à tempore quo non extat memoria, extiterint. Qui dicunt super sacramentum suum quòd in prædictis, per consuetudinem partium illarum, in prædictis recordari debent; et similiter dicunt quòd prædicta Communitas habere debet prædictas consuetudines, et quòd antecessores et prædecessores sui semper hactenûs habere consueverunt, quousque prædicti Johannes et socii sui illas coram eis disallocaverunt. Requisitum est à Lucâ Espiard, Serviente domini Regis ibidem per literas domini Regis patentes, et a Petro Le Marchant, Ballivo, et aliis ministris domini Othonis ibidem, si quid habeant vel dicere sciant pro domino Rege, vel ipso Otone, quare prædicta Communitas prædictas consuetudines et libertates, secundum quod petit, habere non debeat: qui petunt pro domino Rege quòd de jure ipsius domini Regis et ipsius Communitatis in hâc parte inquiratur. Per quod in favorem statûs domini Regis præceptum est Ballivo quòd venire faciat hic duodecim liberos et legitimos homines de nobilioribus partium istarum, per quos rei veritas meliùs sciri poterit et inquiri. Qui quidem summoniti et jurati, de consensu prædictorum Lucæ et Petri, videlicet, Johannes Hervy, Johannes Charles, Nicholaus Leveske, Johannes le Provost, Johannes la Corneille, Radulphus Le Moigne, Johannes le Gay, Radulphus Cokerel, Petrus de Rokere, Gilbertus Lorfevere, Ricardus de Mara, Ricardus Peysant, dicunt super sacramentum suum quòd prædicta Communitas omnes consuetudines et libertates prædictas, ut de jure suo, habere debet, et ipsi et eorum antecessores ac prædecessores, a tempore quo non extat memoria, habere consueverunt, quousque Johannes de Fresingfeld &c, et ministri Otonis de Grandisono &c, absque hoc quòd ipsi in aliquo illa forisfecissent. Quæsitum est à Petro Le Marchant et Lucâ Espiard, et aliis ministris dictorum Domini Regis et Otonis si quid pro ipso domino Rege vel ipso Otone habeant vel dicere sciant quare prædicta Communitas prædictas libertates et consuetudines habere non debeant: qui nichil dicunt. Ideò consideratum est per Justiciarios et Juratos, secundum legem et consuetudinem patriæ, quòd prædicta Communitas per prædictas libertates et consuetudines de cætero deducatur, et quòd dicta Communitas uti et gaudere debeat prædictis consuetudinibus et libertatibus, salvo jure domini Regis si aliàs inde loqui voluerit &c. Pretextu cujus mandati præceptum fuit Ballivo de Guernereye quod scire faciat prædictæ Communitati, per duos liberos et legales homines de ballivâ suâ, quod esset hic ad hunc diem, videlicet, diem Jovis in crastino Sancti Mathei Apostoli, ostensura si quid pro se habeat vel dicere sciat quare prædicti Justiciarii hic ad recordum et processus prædicta recitanda et examinanda, et errores, si qui ineisdem intervenerunt, corrigendos, procedere non debeant &c. Quæ quidem Communitas modo venit, et in plenâ Curiâ, in præsentiâ ejusdem Communitatis, prædictis recordis et processu lectis auditis et intellectis, eadem nichil dicit &c. Et Johannes de Ditton, qui sequitur pro domino Rege, dicit quòd in recordis et processu prædictis erratum est in hoc, videlicet, quòd, cum Dominus Rex nunc per litteras suas patentes assignavit prædictum Willielmum de Burne et socios suos ad recorda et processus coram Johanne de Fresingfield et sociis suis &c, nuper Justiciariis hic, habitâ, et præfato Willielmo et sociis suis sub pede sigilli missa, recitanda, et errores, si qui in eisdem intervenissent, corrigendos,

(adhuc in alio rotulo de eadem materia)

recordum et processus habita coram præfato Johanne de Fresingfield et sociis suis &c, de legibus et consuetudinibus hominum istius Insulæ, coram eis petentium et clamantium libertates et consuetudines suas, super recordo et processu prædictis non reddebatur judicium, nec per præfatum Willielmum de Burne et socios suos fuit revocatum; et licet in eâdem commissione contineatur quòd prædictus Willielmus de Burne et socii sui per sacramentum proborum et legalium hominum insularum prædictarum inquirerent de injuriis, oppressionibus, transgressionibus, gravaminibus et dampnis, in petitionibus Insulanorum de Gernereye contentis, et eis sub pede dicti sigilli missis, et predicta audirent et terminarent, virtute commissionis prædictæ habuerunt potestatem tantum de contentis in prædictis petitionibus justitiam conquerentibus facere, si per aliquem eis in prædictis esset injuriatum contra leges et consuetudines partium illarum, et non de legibus, consuetudinibus et libertatibus prædictis, ac si essent in placito Quo Warranto, cognoscere et terminare; et sic excesserunt formam commissionis suæ quando processerunt, ad demonstrationem et petitionem Communitatis prædictæ, ad inquirendum per sacramentum hominum Communitatis prædictæ, et ad judicium inde reddendum, ubi dominus Rex fuit pars, sicut patet in recordo prædicto, de libertatibus legibus et consuetudinibus, quas eadem Communitas petiit à domino Rege, ut illas quas ipsi et antecessores sui hucusque habuerunt. Unde petit pro domino Rege quòd prædicta processus et recordum examinentur et corrigantur, et judicium inde redditum, tanquam erroneum, revocetur et adnulletur. Dicit etiam quod erratum est similiter in hoc quòd prædicti Willielmus et socii &c., Justiciarii, processerunt ad inquirendum et judicium inde reddendum de prædictis legibus, consuetudinibus et libertatibus, domino Rege inconsulto, cum forsitan prædictus dominus Rex, tam per recordum rotulorum Justiciariorum suorum, quam per recordum rotulorum Justiciariorum domini Regis, quondam Regis Angliæ, patris sui, ac aliorum progenitorum suorum, verificare poterit contrarium quamplurimorum articulorum, legum, libertatum et consuetudinum in prædicto recordo contentorum; et quòd ipse paratus est hoc verificare pro domino Rege per recordum rotulorum Justiciariorum domini Regis et progenitorum suorum; dicit enim quòd in redditione prædicti judicii salvatur jus domini Regis, cum indè loqui voluerit. Petit quòd Justiciarii super hoc habeant avisamentum in præmissis, pro jure domini Regis, cum ipse sit in præmissis paratus jus suum ostendere et verificare maximè, si prædictum Judicium staret in suo robore, cederet in præjudicium domini Regis, sicut plenius patet in recordo prædicto. Et quia tam in recordo et processu prædictis, quam in redditione judicii, errores intervenerunt manifesti, Consideratum est quòd prædictum judicium tanquam erroneum revocetur et penitûs adnulleter, et quòd prædicta Communitas sit in eodem statu, quoad leges et consuetudines suas, in quo fuit ante redditionem judicii prædicti.

Placita coram Henrico Spigurnel, &c.

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Amongst the Records of the Public Record Office in the custody of the Right Honorable the Master of the Rolls, pursuant to the Statute 1 & 2 Vict., c. 94, to wit.

Placita de Juratis et Assisis ac de Quo Waranto coram Justiciariis itinerantibus in Insula Jerseye. A°. 17, Ed. 2.

(M. 22.)

Ordinationes et Præcepta prædictorum Henrici Spigurnel et Willielmi de Denoum, Justitiariorum Itinerantium in Insulâ de Jerseye, pro utilitate hominum Insulæ prædictæ, quæ decetero in singulis articulis firmiter observari et teneri præcipiuntur.

Ordinationes et præcepta Henrici Spigurnel et Willielmi Denoum, Justiciariorum, &c.

Ordinatum est per Justitiarios et præceptum quod placita catallorum debitorum et transgressionum teneantur de octavâ in octavam. Placita vero de hæreditate, de quindenâ in quindenam. Et judicia reddantur ad placita cujuslibet quindenæ, si Jurati septem fuerint præsentes et concordes: et si forte singulis quindenis non fuerint præsentes in Curiâ septem Jurati concordes, reddantur judicia quolibet mense ad minus; nisi fuerit aliquod negotium ita arduum quòd alii Jurati meritò fuerint evocandi ad judicium super eo proferendum. Quòd vero arduum negotium debeat reputari, ad Ballivi arbitrium, qui pro tempore fuerit, erit recurrendum. Et si Jurati judicia differre præsumpserint, quo minûs temporibus reddantur suprascriptis, per Ballivum Regis, qui pro tempore fuerit, ad hoc compellantur, captis pignoribus et pœnâ indictâ.

Item ordinatum est et præceptum quòd, si placitum fuerit inter partes, ubi probatio spectat seu intervenit secundum consuetudinem Insulæ, et probatio illa facta fuerit per testes ad hoc inductos in præsentiâ partium, quòd pars adversa contra hujusmodi testes non audiatur seu admittatur aliquid dicere seu proponere, per quod judicium differatur.

Item quòd nullus præsumat occupare vicos publicos, nec aliquid in eis ponere, vel facere, quo minùs vici publici sint ad usum singulorum, prout ad usum omnium et singulorum fuerunt et sunt deputati. Et si quis contrafecerit, tociens quociens contravenerit, puniatur.

Item quòd vici publici mundentur et mundi teneantur. Et, si quis contrafecerit, tociens quociens contravenerit, puniatur.

Item quòd jurent advocati quod nullam causam fovebunt, nisi quam justam et bonam crediderint, et quòd fidele patrocinium clientibus suis præstabunt. Et quòd per frivolas exceptiones seu cavillationes lites non prorogabunt. Et, si quis contrafecerit, ad arbitrium Ballivi et Juratorum puniatur. Prædictum vero juramentum singulis annis in primâ Curiâ post festum sancti Michaelis renovetur.

Item ordinatum est et præceptum quòd omnes molendinarii capiant mulcturam debitam et consuetam, et hoc per mensuram consignatam, in præsentiâ et visu illorum quorum blada sunt, seu nomine eorum deferentium, et hoc in areâ molendini. Et quòd decetero non capiatur farinagium. Et qui contra præmissa deliquerint, graviter puniantur si ad hoc sufficiant, sin autem

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Præcepta et ordinationes Henrici Spigurnel, &c.

respondeant domini illorum aut superiores. Et fiant hujusmodi emendæ coram Ballivo et Juratis in Curiâ domini Regis tociens quociens necesse fuerit.

Item ordinatum est et præceptum quòd nullus ponat wreccum maris in rivulis aquæ dulcis ad inficiendum prædictas aquas, quæ ad usus hominum deserviunt, nisi tantum in rivulis mari contiguis.

Item quòd tabernarii, qui exponunt venditioni unum dolium boni vini vel pipam ad certum pretium, et postmodùm, cum vendiderint medietatem tertiam quartam vel aliam quamvis partem, immiscent aliud vinum malum, vel alium liquorem, et ad idem pretium vendunt, sub colore bonitatis quam vinum primo habuit quando fuit expositum venditioni, graviter puniantur. Et tociens quociens idem commiserint similiter puniantur. Similiter de Bolongariis.

Est etiam ordinatum et præceptum quòd visores et tastatores vini, cervisiæ, ciseræ, et aliorum liquorum venalium videant et gustent de quolibet dolio quod venditur in tabernâ semel antequam venditioni exponatur, et aliâ vice cum fuerit venditum pro mediâ parte vel circiter, et tertiâ vice in fine vel circa finem venditionis cujuslibet dolii. Et, si quid immixtum fuerit inventum, per quod vinum vel liquor venalis fuerit deterioratum, venditor graviter puniatur.

Item quòd nullus quærat garbagium tempore quo dominus Rex campertitat seu campertat, nec etiam post, nisi custodes ecclesiarum vel leprosi. Et, si qui contrafecerint, per Ballivum et Juratos puniantur.

Item quòd officium portitorum seu bermannorum committatur alicui bono viro qui Regi et populo possit respondere, si dampnum aliquod per eorum culpam acciderit. Et quod juxta arbitrium sex bonorum virorum de villâ Sancti Petri in portu per Ballivum et Juratos ad hoc eligendorum, satisfactio fiat pro labore ipsorum, consideratis laboris quantitate et loci distantiâ et aliis quæ equitate suadente fuerint consideranda.

Item quòd nullus exerceat officium corretarii, nisi per Ballivum cum consilio Juratorum ad hoc fuerit admissus, et quòd juret quòd nichil faciet seu fieri procurabit, quod vertatur in præjudicium seu dampnum Regis, populi Insulæ, vel aliorum negotiantium. Et quòd nullus recipiatur tanquam socius in mercimoniis, in hanuris consuetis adductis, tempore makerellorum, vel aliàs, nisi tantum habeat in bonis unde possit solvere mercimonium. Et, si qui contravenerint, ad arbitrium Ballivi et Juratorum puniantur.

Item ordinatum est et præceptum quòd omnes, qui terras et tenementa tenent per bordagium, habeant super singulis bordagiis, quæ per prædictum servicium tenentur, capitalem quandam mansionem in loco ad hoc consueto, infra tres menses à tempore præsentis ordinationis pupplicatæ computandos, in quâ quidem mansione moretur et semper possit inveniri aliquis masculus qui mandata Ballivorum recipiat et exequatur: alioquin ipsa tenementa capiantur extunc in manum Regis, qui ea possit assignare aliquibus qui prædictas faciant mansiones, et mandata exequantur ballivorum.

Item sit in Insulâ Sigillum quoddam Regis ad contractus et conventiones, prout est hactenùs usitatum, et non apponatur alicui instrumento nisi per testimonium ad minus duorum Juratorum Regis.

Item ordinatum est et præceptum quòd citati vel adjornati qui non comparuerint in judicio infra primam, possint tunc poni in defectu et tanquam contumaces puniri.

Item ordinatum est et præceptum quòd carnifices vel alii non fundant coprum suum seu pinguedinem infra villas, et si quis contrafecerit puniatur.

Item, quia multa mala et incomoda temporibus retroactis hominibus istius Insulæ multipliciter evenerunt, et indies evenire poterunt, de mensuris, tam signatis quam non signatis, ad emendum et vendendum falsis et insufficientibus, prout in Itineribus hic pleniùs convictum est, ordinatum est et præceptum quòd decetero sigillum, pro mensuris deputatum, committatur per Ballivum domini Regis et Juratos alicui viro discreto et fideli custodiendum: ita quòd nulla mensura decetero prædicto sigillo signetur, nisi per prædictum Ballivum et duos Juratos ad minus priùs examinetur, et deinde in eorum præsentiâ sigilletur.

Omnes autem prædictæ ordinationes singulis annis ad placita capitalia domini Regis tenta ante festum sancti Michaelis in pupplico recitentur, et in præsentiâ Juratorum et Ballivi, ut in singulis suis articulis pleniùs observentur.

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Among the Records of the Public Record Office in the custody of the Right Honorable, the Master of the Rolls, pursuant to the Statute 1st and 2nd Vict., c. 94; to wit.

Placita coram Roberto de Scardeburgh, &c., Justiciariis, &c., anno quinto Edw. III.

Placita apud Sanctum Petrum de Portu in Insulâ de Gernereye, coram Roberto de Scardeburgh, Roberto de Norton, et Ricardo de Westcote, Justiciariis domini Regis Itinerantibus in Insulâ de Gernereye, Jeresey, Serk, et Aureneye, die Sabbati proximo post festum translationis Sancti Thomæ Martiris, anno regni Regis Edwardi tercii à conquestu quinto.

Gernereye.—Communitas ejusdem Insulæ summonita fuit ad respondendum domino Regi de placito quo waranto clama habere duodecim Juratos de se ipsis, qui eligi debent per ministros domini Regis et per se ipsos, cum opus fuerit, scilicet, post mortem unius eorum alter fidedignus loco ejus eligi debeat. Et similiter quòd, si quis eorum de aliquâ falsitate convictus fuerit, quòd per eorum electionem loco sui debeat alter substitui et jurare sine conditione tamen ad manutenendum et salvandum jura domini Regis, patriotarum, &c. Et etiam quòd ipsi duodecim jurati debeant judicare de omnibus causis, placitis, et feloniis factis vicinis, extraneis, et aliis quibuscunque, et quòd emendæ omnium præmissorum per ipsos duodecim taxari debeant. Et quòd ipsi Jurati, Justiciariis per commissionem domini Regis ad assisas capiendas vel quæcunque alia placita hîc audienda et terminanda assignatis, clamant eis associari ad judicia reddenda. Et quòd, si dominus Rex de aliquo recordo vel processu coram hujusmodi Justiciariis

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Placita coram Roberto de Scardeburgh, &c., Justiciariis, &c., anno quinto Edw. III.

hic placitatis voluerit certiorari, quòd ipsi duodecim, unà cum Justiciariis, recordum illud facere debeant. Et quòd nullus de libero tenemento suo, quod per annum et diem pacificè tenuerit, sine brevi domini Regis de cancellariâ respondere debeat. Et quòd nullum placitum infra insulam prædictam, coram aliquibus Justiciariis, incœptum, debeat extra insulam prædictam adjornari, sed ibidem omnino terminari. Et quòd amerciamenta qualiacunque, ob aliquorum defectus emergentia, seu fines propter aliquorum transgressiones, debeant per ipsos duodecim taxari. Et quòd nullus pro feloniâ dampnatus, extra insulam factâ, hæreditates infra insulam forisfacere possit, quin hæredes sui eas habeant, &c. Et quòd, si aliquis forisfecerit, et abjuraverit Insulam, et postea dominus Rex pacem suam ei concesserit infra unum annum et unum diem abjurationis suæ, et revertatur ad insulam, de hæreditate suâ plenariè debet restitui. Et quòd quieti esse debeant de omnimodis tallagiis, auxiliis et contributionibus quibuscunque. Et quòd nullus ibidem debeat imprisonari in castro, nisi in casu criminali vitam vel membrum tangenti, et hoc per assensum et judicium prædictorum Juratorum. Et quòd dominus Rex nullum Præpositum ibidem habere debeat, nisi per eorum electionem. Et quòd dominus Rex nullum Grangiarium ibidem habere debeat, nisi per eorum electionem. Et quòd nullus debeat de suo debito levando retardari propter debitum domini Regis &c. Et quòd dominus Rex amerciamenta et servitia sua levare non debeat, nisi per Præpositum per eos ad hoc electum. Et quòd non debeant coram Justiciariis domini Regis ad assisas capiendas assignatis respondere, antequam transcripta commissionum earumdem sub sigillis suis eis liberentur &c. Et quòd Justiciarii, per commissionem domini Regis ad assisas capiendas hic assignati, non debent placita hic tenere ultra spatium trium septimanarum, et quòd ipsi coram eis nisi per tempus supradictum venire (*? non*) tenentur, &c. Et quòd ipsi non tenentur domino Regi homagium facere, quousque ipse dominus Rex ad partes istas venerit, &c.

Et Communitas venit, et, quoad prædictas libertates de habendo duodecim Juratos de se ipsis, et quòd omnia placita, quæcunque fuerint, debeant hic terminari et non alibi adjornari &c, dicit quòd ipsi et omnes antecessores sui, à tempore quo non extat memoria, inde seisiti fuerunt sine temporis interruptione, &c. Et, quoad omnes alias libertates, petunt quòd ipsi adinvicem possunt habere colloquium et avisamentum. Et super hoc dies datus est prædictæ Communitati apud Lungeville, in Insulâ de Jereseye, die Mercurii proximo post festum Sancti Petri quod dicitur ad Vincula, ad audiendum inde judicium suum, &c. Ad quem diem venit Robertus de Hoo qui sequitur pro domino Rege. Et prædicta Communitas non venit. Ideo consideratum est quòd omnes prædictæ libertates in manu domini Regis capiantur, &c.

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Amongst the Records of the Public Record Office in the custody of the Right Honorable the Master of the Rolls pursuant to the Statute 1 and 2 Vict., c. 94, to wit:

Placita coronæ coram Justiciariis itinerantibus in Insulis Gernereye, Jereseye, Serke et Aureneye. A°. 5 Ed. III.

Placita Coronæ coram Justiciariis itinerantibus anno quinto Edw. III.

(*M.* 1.)

Inquirendum est per singulas duodenas.

" De veteribus placitis coronæ non determinatis, quod intelligendum est de omnibus rebus perpetratis contra coronam et pacem domini Regis ante ultimas assisas, (*? tam*) de quibus non fuit facta mentio in assisis, quam de illis quæ incepta fuerunt in assisis et non deducta ad debitum finem.

" Item de omnimodis placitis coronæ quæ emerserunt post ultimas assisas tam de homicidiis, raptu, robberiis, quam furtis et omnibus aliis malis, ad quæ spectat admissio vitæ vel membrorum, videlicet, per quem vel per quos facta fuerit, et per quorum consilium, auxilium vel procurationem, et qualiter, et quo modo, quibus tempore et anno. Et de manutentoribus et receptatoribus felonum illorum. Et de terris et catallis felonum illorum, et quid et quantum valeant catalla illa et terræ per annum in omnibus exitibus. Et quid felones illi post factum devenerunt, et quid factum fuerit coram ministris de insulâ, distincté et aperté.

" Item per quorum terras utlagati, vel illi qui insulas abjuraverunt, post utlagariam vel abjurationem hujusmodi transierunt tanquam homines pacis, et cum quibus, et per quos fuerunt receptati.

" Item de terris et catallis felonum hujusmodi utlagatorum vel insulas abjurantium à tempore domini Henrici Regis, avi domini Regis nunc, sive pax domini Regis eis postea concessa fuerit vel non. Et quis terras illas teneat, et quantum valeant per annum in omnibus exitibus.

" Item de Falsatoribus monetæ cujuscumque, sive sigillorum, et eorum catallis terris et receptatoribus.

" Item de usurariis et eorum catallis.

" Item de retonsoribus alienorum bidencium furtivè.

" Item de tanantibus seu corodiantibus corria furtivè scientes.

" Item de maliciosis quærentibus contumelias, videlicet, tam de illis qui hoc faciunt versus innoxios ut sic pecuniam vel curialitatem ab eis extorqueant, quam de illis qui ex consuetudine levant contumelias.

" Item de piscantibus in alienis aquis furtivè.

' Item de exploratoribus hujusmodi malorum et eorum manutentoribus.

" Item de maliciosis potantibus in tabernâ, compellentibus simplices homines domini Regis invitos solvere pro potu suo sive cibis.

" Item de forstellatoribus quibuscunque tam inter (*? in*) terris quam in aquâ, quod intelligendum

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Placita Coronæ coram Justiciariis itinerantibus anno quinto Edw. III.

est tam de forstallantibus homines et districtiones, quam pisces mercandisas et alia venalia antequam perveniant ubi debent vendi.

" Item de impedientibus custumas domini Regis qualescumque vel illas asportantibus sub quocumque colore.

" Item de illis qui Insulas abjuraverunt alibi quam in cimiteriis, qualiter, et ob quam causam, et coram quibus, et quando, et ubi, apertè et distinctè.

" Item de clamore de Harou levato, per quos justè, et ob quam causam, et per quos injustè.

" Item de nocturnis insultoribus et verberatoribus.

" Item de insultoribus prostrantibus ad terram.

" Item de efusoribus sanguinis.

" Item de insultoribus et verberatoribus in viâ regiâ.

" Item de interfectis per bestias, et aliis mortuis per quodcunque infortunium, et qualiter, apertè et distinctè.

" Item de hiis qui trahunt homines domini Regis in placitum in Curiâ Christianitatis extra regnum et potestatem domini Regis ex quâcunque causâ.

" Item de hiis qui trahunt homines domini Regis in placitum in Curiâ Christianitatis de terris debitis vel aliis querelis, unde cognitio spectat ad Curiam domini Regis.

" Item de ministris et ballivis quibuscunque negligentibus seu remissis in officio excercendo circa felones attachiandos, vel placita coronæ attachianda, et qualiter.

" Item de evasionibus quorumcunque captorum vel attachiatorum, et quo modo, vel etiam de ecclesiis effugientium.

" Item de capientibus mercedem ad concelandum latrocinia vel alias felonias.

" Item quot et quæ maneria, terras, redditus, vel alias tenuras quascunque dominus Rex habeat de antiquo dominico coronæ, et quid et quantum valeant per annum in omnibus exitibus.

" Item quot et quæ maneria terras redditus vel alias tenuras quascunque dominus Rex habeat per eschaetam, et a quo, et quid et quantum valeant per annum in omnibus exitibus.

" Item de feodis domini Regis, servitiis et custumis quibuscunque domino Regi debitis de terris quorumcumque, distinctè et apertè.

" Item de advocationibus ecclesiarum ad regem spectantibus et eorum valore.

" Item de custumis et prisis quibuscunque domino Regi debitis in portu vel in mari, distinctè et apertè, et quid valeant per annum in omnibus exitibus.

" Item de warecco maris post ultimas assisas, et quid et quantum inde acciderit, et ad quorum manus devenerit, et cujus pretii ad verum valorem catallorum illorum.

" Item si quis illorum inde celaverit vel asportaverit sine bono varanto et cujus pretii.

" Item de illis qui ante ultimas assisas aliquid asportaverunt de hujusmodi warecco quod domino Regi nondum fuerit emendatum.

" Item de bestiis de veif, et valore earumdem, et ad cujus manus devenerunt.

" Item de fugantibus in terrâ domini Regis, vel cuniculos suos capientibus, sine speciali licentiâ Ministrorum potestatem habentium hujusmodi licentiam concedendi.

" Item de piscantibus contra statuta domini Regis et contra debitas consuetudines hactenùs usitatas, et quo modo, et quantum ceperint, et quotiens, et cujus pretii.

" Item de furantibus retia, piscem, vel alia bona aliorum in portu vel in mari.

" Item de asportantibus et concelantibus prisas vel custumas domino Regi debitas in portu vel in mari.

" Item de terris, redditibus, firmis, consuetudinibus, servitiis, feodis, custumis, advocationibus ecclesiarum, prisis, vel aliis rebus seu possessionibus quibuscunque domino Regi vel progenitoribus suis, regibus Angliæ, subtractis vel alienatis in terrâ vel in mari, et qualiter, et per quem, vel per quos, et à quo tempore, et quid subtracta hujusmodi valeant, distinctè et apertè.

" Item de quibuscumque libertatibus super dominum regem vel progenitores suos occupatis vel usurpatis, sive de warecco maris, vel aliis consuetudinibus in terrâ vel in mari, sive de warennâ vel cacheâ, per quem vel per quos, et qualiter, et à quo tempore.

" Item de omnibus warennam vel cacheam vel commercatum vel alias libertates habentibus, et à quo tempore, et quo varanto hujusmodi libertates habuerunt, et quales et qualiter eis usi fuerunt.

" Item de assisis panis, vini et cervisiæ fractis.

" Item de falsis ponderibus et mensuris.

" Item de ementibus per unam mensuram et vendentibus per aliam.

" Item de hiis qui de consuetudine frangunt assisas nolentes inde castigari.

" Item de mixtoribus vini et qualiter et quo modo.

" Item de vendentibus vina ante visum.

" Item de pourpresturis factis super dominum Regem vel super vicinos in villis in terrâ vel in mari, et qualiter, quo modo, et à quo tempore.

" Item de construentibus columbaria sine licentiâ, et molendina.

" Item de illis qui capiunt columbas per quæcunque ingenia.

" Item de Juratoribus domini Regis qui prece vel pretio fovent partes in placitis sive manutenent, et quo modo.

" Item si quis eorum, vel aliquis alius, sit ambidexter capiens ab utrâque parte.

" Item de ministris qui prece vel pretio partes manutenent, vel jus quocunque maliciosè distulerint, per quod alii partium de jure suo derogetur.

" Item de terris, redditibus, vel aliis bonis, vel (? *per*) progenitores domini Regis datis monasteriis, abbatiis, prioratibus, ecclesiis, seu aliis quibuscunque in liberam elemosinam ad cantariam vel elemosinam sustentandam, si cantariæ vel elemosinæ illæ recte fuerint sustentatæ.

" Item de thesauro invento, quid, et quantum, et cujus pretii, et ad cujus manus devenerit.

Placita coronæ coram Justiciariis itinerantibus anno quinto Edw. III.

" Item de ydiotis et eorum terris, et quis eas teneat, et quantum valeant per annum in omnibus exitibus.

" Item si quis eorum prece vel pretio distulerit scienter, vel falsum judicaverit, et qualiter, et quid ob hoc ceperit.

" Item de vendentibus pisces alibi quam loco statuto.

" Item de alienantibus, elongantibus, vel concedentibus pisces regales, per quod domino Regi non respondeatur de parte sua.

" Item de salientbus congros contra statutum, vel alios vendentibus contra statutum est, vel alibi ducentibus quam ad esperkariam domini Regis.

" Item de liberè tenentibus qui non venerunt coram Justiciariis primo die Itineris.

" Item de Murdro, et modo facti, et suspiciosis feloniæ illius."

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## M. 2.

### *Gernereye.*

Placita Coronæ coram Roberto de Scardeburgh, &c.

Placita Coronæ apud Sanctum Petrum de Portu coram Roberto de Scardeburgh, Roberto de Norton, et Ricardo de Westcote, Justiciariis domini Regis Itinerantibus in Insulis de Gernereye Jereseye, Serk et Aureneye, die Sabbati proximo post festum Translationis Sancti Thomæ Martiris, anno regni regis Edwardi tercii à conquestu quinto.

Nomina Ballivorum, Præpositorum, Bedellorum, Juratorum, et Sectatorum curiæ Insulæ de Gernereye.

Thomas de Esterfeld, Ballivus et Coronator nunc.
Nicholaus Bernard, Præpositus nunc.
Nicholaus Collochit, Bedellus nunc.

Ballivi post ultimas assisas.

Willielmus le Petit mortuus est et nullus venit ad reddendum rotulos ejus. Ideo ad judicium de tenentibus terras, &c.
Petrus le Garrys venit.
Henricus de Sancto Martino obiit et nullus venit ad reddendum rotulos ejus. Ideo ad judicium de tenentibus terras, &c.
Ranulphus le Gay venit.
Galfridus de la Hog' venit.
Radulphus Cokerel venit.

Postea venerunt tenentes terrarum prædicti Willielmi, et hæres prædicti Henrici, et finem fecerunt cum domino Rege, prout patet in rotulo de finibus.

*Nomina Juratorum nunc.*

Johannes de Vivers.
Radulphus le Moigne.
Ricardus Tulle.
Petrus Pilet.
Johannes la Cornaille.
Johannes Nichol.
Reynulphus de Wike.
Henricus de la Mule.
Jordanus Dyscart.
Matheus de Saltmares.
Johannes Esturs.
Radulphus de Bello Campo.

*Nomina custodum Insularum post ultimas assisas.*

Gerardus Oroms sub Otone de Grandissono.
Johannes de Roches.
Petrus Bernard de Pynsole.
Laurentius Gaylard.

*Præpositi post ultimas assisas.*

Dionisius Marchaunt.
Johannes de la Marche.
Thomas le Corner.
Radulphus Matheu.
Robertus le Gay.
Matheus de la Rue.
Radulphus le Provost.

*Sectatores Curiæ domini Regis in insulâ prædictâ.*

Episcopus Custanciensis.
Abbas de Monte Sancti Michaelis.
Abbas de Mermoustre.
Willielmus de Cheyny.
Abbas de Blancâ Landâ.
Abbas de Cruce Sancti Leufridi.
Abbas de Longnes.
Abbatissa de Cadamo.
Matheus de Saumareys.

*Nomina Juratorum Parochiarum.*

*De Parochiâ Sancti Sampsonis.*

Willielmus de la Chapele, } Electores
Matheus Blundel, } Juratorum.
Radulphus de Prey, } Jurat-
Petrus Maugyt, } ores.
Willielmus de Rocher, }
Ricardus Jakelyne, }
Maguerus de Port, }
Henricus Le Blaunche, }
Willielmus de Homet, }
Radulphus Markes, }
Petrus Le Gay, }

*De Parochiâ Forestæ.*

Robertus Le Joevene, } Electores
Philippus Peytevyn, } Juratorum.
Johannes Le Forester, } Jurat-
Johannes de Varyouf', junior, } ores.
Willielmus Carehou, }
Willielmus Meriane, }
Johannes Le Mesurer, }
Johannes Hays, }
Radulphus Le Rous, }
Ricardus Tourgys, }

GUERNSEY.

Placita Coronæ coram Roberto de Scardeburgh, &c.

*De Parochiâ Sancti Petri de Bosco.*

Robertus Corbyn, } Electores
Johannes de Gorreys, } Juratorum.
Johannes de Lile,
Ricardus Falle de Pont,
Johannes Corbyn,
Thomas Adam,
Ricardus filius Johannis Falle,
Guillielmus Rogier,
Thomas Le Barsier,
Thomas Esbregart,
Johannes Olyver,
} Juratores.

*De Parochiâ Sancti Salvatoris.*

Ricardus Henry, } Electores
Nicholaus Nichole, } Juratorum.
Petrus David,
Guillielmus Genemye,
Robertus Esmanseys,
Robertus Tephagne,
Johannes Le Canf',
Guillotus Dam,
Gilbertus Alexandre,
Johannes filius Droc' Henri',
} Juratores.

*De Parochiâ Sancti Martini de Bellosa.*

Jordanus Moylepee, } Electores
Willielmus del Estak, } Juratorum.
Johannes Corbyn,
Johannes Charles,
Willielmus La Bascayse,
Thomas Antekyn,
Willielmus Le Carpenter,
Robertus Cokerel,
Ricardus Castal,
Petrus Henri,
Johannes de Iscard,
} Juratores.

*De Parochiâ Sancti Andreæ,*

Petrus de Billik, } Electores
Ricardus Corbyn, } Juratorum.
Petrus Torgis,
Guillielmus Balenf.'
Perinus Le Cot,
Radulphus Ballenf',
Johen John,
} Juratores

*De Parochiâ Beatæ Mariæ de Castro.*

Radulphus Toulley, } Electores
Ricardus de la Court, } Juratorum.
Jordanus Pernele,
Johannes Blondel,
Ricardus de Lessey,
Petrus de Lessey,
Johannes Isoree,
Petrus Thom,
Johannes La Bosoigne,
Matheus Degenas,
Johannes Le Bord,
Johannes Carite,
} Juratores.

*De Parochiâ de la Vale.*

Thomas Hamelyn, } Electores
Willielmus de Fountenel, } Juratorum.
Guillielmus Jord',
Guillielmus Wauter,
Johannes Bequeiel,
Petrus Ereng',
Johannes Le Sage,
Ricardus Mengny,
Ricardus Le Rossignel,
Matheus Goscelyn,
Guillielmus de Fountenell,
Thomas de . . . . . .
Guillielmus Ereng',
} Juratores.

*De Parochiâ de Tortyval.*

Ricardus Broard, } Electores
Johannes le Clerk, } Juratorum.
Ricardus Simon,
Johannes de Lestak,
Nicholaus Broward,
Johannes Le Clerk,
Ricardus Berchant,
Petrus Le Vileyn,
Petrus Surtouf,
Johannes de La Fosse,
Johannes Dry Le Petyt,
Michael Dry,
} Juratores.

*De Parochiâ Sancti Petri in Portu.*

Johannes Burnel, } Electores
Johannes Payn de Flur, } Juratorum.
Johannes de la Cour sutor,
Augustinus Goce,
Willielmus Roigne de la grant queste,
Radulphus Tourgys,
Willielmus Sampson de Verenga,
Michel Saunsom filius Roberti Saunsom,
Jordanus Le Botelyr,
Paulus Goesman,
Jordanus de Molepee,
Johannes Burnel,
Ricardus Nostre Homme,
} Juratores.

*Nomina Juratorum de novo electorum.*

Philippus de Sancto Martino,
Nicholaus Malecovenant,
Nicholaus Blondel,
Matheus Malecovenant,
Johannes Desmans,
Petrus Selekyn,
Guillielmus de Capella,
Oliverus le Feyure,
Radulphus Toulley,
Philippus Belebouche,
Henricus de Wyk,
Petrus Torguis,
} Jurati.

*Nomina Bordariorum.*

Petrus Hoel.
Johannes Kaynel.
Petrus Sancci.
Radulphus Tronce.
Galfridus Rungefer.
Gilbertus Saete.
Radulphus de Beauvier.
Guilbertus Nicholas.

GUERNSEY.

Placita coronæ coram Roberto de Scardeburgh, &c.

(M. 2 d.)

—"Scardeburgh."

Parochia Sancti Sampsonis venit per undecim juratores.

Iidem juratores præsentant quoad articulum de veteribus placitis Coronæ, &c., nihil sciunt. De novis autem, quæ emerserunt post ultimas assisas, &c., præsentant quòd malefactores ignoti accesserunt ad domum ecclesiæ Sancti Sampsonis contra pacem, et ibidem fregerunt ostia, et furtivè ceperunt vina ibidem inventa, quæ fuerunt Guillielmi Wautier, et deinde usque in portu Sancti Sampsonis recesserunt, et ibidem furtivè ceperunt quandam navem cum batello quæ erant Johannis Brian de Britanniâ et abduxerunt. Nescitur qui fuerunt, nec quò devenerunt, nec de eorum catallis, terris seu tenementis, si quæ habeant. Et quia hoc evenit de die et parochia prædicta non cepit malefactores. Ideo ad judicium, &c.

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Item, quoad articulum de custumis domini Regis, præsentant quod dominus Rex percipit de custumâ de quolibet milleario makerellorum piscatorum viginti denarios Turonenses, et de quolibet centeno congrorum viginti solidos Turonenses, et de quolibet batello, exeunte extra regnum cum piscibus vendendis, duos solidos Turonenses, et de quolibet bacone quatuor denarios Turonenses, et de porco vivo duos denarios Turonenses, et de porcâ vivâ pregnante vel non duos denarios Turonenses, et de quolibet bove, vel vaccâ eunte extra regnum, duodecim denarios Turonenses, et de quolibet multone, bidente vel agno, unum denarium Turonensem et de centeno cepi vel auxung quatuor denarios Turonenses, et de centeno pellium bidentum vel multonum quatuor denarios Turonenses, quotiens scilicet dictæ marcandisæ extra Insulas portentur, exceptis animalibus in separali pasturâ per annum et diem nutritis, et tunc per sacramentum deliberentur ei cui &c. Et juratores testantur quòd nihil inde aretro est domino Regi, &c.

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(M. 3.)

—"Scardeburgh."

Parochia Sancti Petri in bosco venit per undecim juratores.

Iidem juratores præsentant quòd de veteribus placitis Coronæ &c., nichil sciunt. De novis autem quæ emerserunt post ultimas assisas &c., dicunt quòd Johannes Broard, filius Michaelis Broard, mense Marcii, anno regni domini Regis nunc quarto, felonicè furatus fuit in eâdem parochiâ quamdam peciam ferri quæ fuit mercatoribus de Britanniâ, pretii iiij$^{s}$ Turonensium. Et quòd idem Johannes Broard, die Mercuriiproximo post Octabas Sancti Hillarii, anno regni dicti Regis nunc tercio, in parochiâ prædictâ felonicè furatus fuit unum multonem Roberti de Poyson, pretii v$^{s}$ Turonensium. Et quòd idem Johannes, die et anno prædictis, felonicè furatus fuit quinque solidos Turonenses de denariis Petri Blundel in parochiâ Sancti Salvatoris. Et quòd idem Johannes, anno regni ejusdem domini Regis nunc tercio, felonicè furatus fuit unum multonem Roberti Aleyn in parochiâ Sancti Petri de Bosco. Et quòd Johannes Baraban de parochiâ Sancti Salvatoris, die Mercurii proximo post festum Pentecostes, anno regni domini Regis nunc tercio, felonicè furatus fuit in parochiâ Sancti Petri de Bosco unum multonem dictum Wayf, pretii quinque solidorum Turonensium, et pro eo quòd [*furatus est?*] xx garbas ordei de garbis Willielmi Roger, in parochiâ Salvatoris, mense Augusti, anno regni dicti Regis nunc quarto, pretii iij$^{s}$ Turonensium. Et quòd idem Johannes Baraban felonicè furatus fuit xiij garbas ordei de garbis Willielmi True, pretii iij$^{s}$ Turonensium. Et quòd Orenga Dangok, mense Augusti, anno regni ejusdem Domini Regis nunc quarto, felonicè furata fuit in eâdem parochiâ xij garbas fabarum, de garbis Roberti Dangaroys, pretii iij$^{s}$ Turonensium. Et quòd eadem Orenga felonicè furata fuit duas gallinas Roberti de la Hoget, in eâdem parochiâ, pretii viij$^{d}$ Turonensium. Et quòd Johannes Ryvel de eâdem parochiâ Sancti Petri, felonicè furatus fuit quinque panes Petri Martel, pretii ij$^{s}$ Turonensium, die Mercurii proximo post festum Nativitatis Domini, anno regni domini Regis nunc quarto. Et manentes sunt in Insulâ. Ideo capiantur. Postea venerunt prædicti Johannes Broard, Johannes Baraban, Orenga Dangok et Johannes Ryvel, et per Justiciarios singillatim allocuti, qualiter se velint de feloniis sibi impositis acquietare, dicunt singillatim quòd in nullo sunt inde culpabiles, et de bono et malo ponunt se super patriam. Et Juratores dicunt, super sacramentum suum, quòd prædicti Johannes Broard, Johannes Baraban, Orenga Dangok et Johannes Ryvel in nullo sunt culpabiles de feloniis prædictis sibi impositis. Ideo ipsi inde quieti. Non subtraxerunt se.

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Radulphus le Carpenter, de parochiâ prædictâ, captus fuit pro suspectione latrocinii de multonibus et aliis malefactis, et liberatus in custodiam Johannis de la Marche tunc Vicecomitis. Ideo respondeat idem Johannes quò devenit. Et non est aliquis qui respondet pro prædicto Johanne quò prædictus Radulphus devenit nec compertum est per rotulos Coronatoris quòd prædictus Radulphus obiit in prisonâ. Ideo ad judicium de evasione ipsius Radulphi, super ipsum Johannem. Et postquam sic evasit, fugit. Et malecreditur. Ideo exigatur et utlagetur.

(M. 3. d.)

Adhuc de parochiâ Sancti Petri in bosco.

Johannes Fellot captus fuit pro suspectione cujusdam vaccæ Guyonis Nichol de parochiâ Sancti Salvatoris felonicè furatæ, et liberatus fuit in custodiam Johannis de la Marche, tunc Vicecomitis. Ideo respondeat idem Johannes quò devenit. Et non est aliquis qui respondet pro prædicto Johanne quò prædictus Johannes Felot devenit nec compertum est per rotulos

GUERNSEY.

Placita coronæ coram Roberto de Scardeburgh, &c.

coronatoris quòd prædictus Johannes Felot obiit in prisonâ. Ideo ad judicium, de evasione ipsius Johannis Felot, super ipsum Johannem de la Marche. Et, postquam sic evasit, fugit. Et malecreditur. Ideo exigatur et utlagetur.

De defalcatione etiam dicunt quod Abbas de Monte Sancti Michaelis, Avicia de Vy de parochiâ de Tortevale, non venerunt coram justiciariis primo die Itineris. Ideo ipsi in misericordiâ.

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(M. 4.)

—" Scardeburgh."

Parochia Sancti Martini de Bellosâ venit per undecim juratores.

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Præsentant etiam de retonsoribus lanarum, &c., quòd Coletta Morell felonicè tonsavit lanas de bidentibus Ricardi Larcher et aliorum de parochiâ, ad valenciam vj$^{d}$, et manens est in Insulâ. Ideo capiatur, &c. Postea testatur quod prædicta Coletta non est inventa, sed subtraxit se. Et malecreditur. Ideo exigatur et wavietur. Catalla ejus nulla.

Item, quoad articulum de Harow, præsentant quòd Matheus Gros et Thomas Gros, clerici, verberaverunt Matheum de la Bonneye contra pacem, &c. Et, postea summoneri fecerunt prædictum Matheum de la Bonneye ad Curiam Christianitatis de placitis unde cognitio spectabat ad curiam regiam, &c., contra coronam, &c. Ideo ipsi in misericordiâ, &c.

De infortuniis, &c. præsentant etiam quòd, anno regni domini Edwardi, patris domini Regis nunc, decimo nono, quidam Guillielmus Godfrey et Guillimota filia ejus ascenderunt supra quandam collem in parochiâ istâ, et turbine venti aquilonaris, pedibus suis cespitantibus, ceciderunt, ita quòd dirrupti fuerunt, et obierunt. Nullus inde malecreditur. Judicium infortunii.

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(M. 5. d.)

—" Scardeburgh."

Parochia Sanctæ Trinitatis de Forestâ venit per decem juratores.

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De purpresturis, &c., præsentant quòd Jordanus Discart obturavit quendam fontem in parochiâ istâ, qui solebat esse communis omnibus ibidem haurire volentibus, ad nocumentum patriæ. Ideo præceptum est Vicecomiti quòd deobstruere faciat fontem prædictum, ad custagia ipsius Jordani, et redigere in statu quo priùs. Ideo Jordanus in misericordiâ quia non prius, &c.

Iidem juratores præsentant, quoad articulum de Harow, quòd Robertus Levesque et Nicholaus Roger levavit clameum de Harow contra consuetudinem Insulæ. Ideo ipsi in misericordia, &c.

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Parochia Beatæ Mariæ de Castro venit per undecim juratores.

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De vagantibus ad tabernas nocturno tempore, &c., dicunt quòd Johannes de Sancto Georgio solitus est ducere homines ad tabernas causis fictis, et, ipsos ibidem cum habuerit fecit eos dispendere contra eorum voluntatem, vigore, &c. Ideo in misericordiâ, &c.

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(M. 6.)

—" Scardeburgh."

Parochia Sancti Salvatoris venit per decem juratores.

Juratores presentant quòd de veteribus placitis coronæ nichil sciunt. De novis autem præsentant quòd quidam Radulphus de Herriche et Johannes de la Roche in parochiâ istâ contenderunt ad invicem, ita quòd prædictus Radulphus percussit prædictum Johannem cum quodam cultello in corpore, ita quòd inde obiit; et manens est in Insulâ. Ideo capiatur. Postea testatum est per Vicecomitem quòd prædictus Radulphus non est inventus. Ideò exigatur et utlagetur.

Thomas le Manyan, de parochiâ Sancti Petri de bosco, qui aliàs pro diversis feloniis quas fecerat suspensus fuit, jam sex annis elapsis, tempore Guillielmi de Sub Monte tunc Ballivi, habuit terram quæ valet per annum x$^{s}$ iij$^{d}$ Turonenses unius anni, et vastum j marcam Turonensem. Ideo respondeat idem Henricus de pretio terræ prædictæ per medium tempus lx$^{s}$ xviij$^{d}$. Et, quia terra prædicta non tenetur de alio medio nisi domino Rege in capite, prout &c, ideo remaneat domino Regi tanquam escaeta &c, et Custos insulæ prædictæ, qui pro tempore fuerit, oneretur de valore terræ prædictæ singulis annis &c. Postea testatum est quòd idem Thomas habuit catalla ad valenciam lv$^{s}$ Turonensium, quæ domino Regi debent esse forisfacta, quæ Guillielmus de Submonte nuper Receptor &c occupavit. Ideo idem Guillielmus inde oneretur &c.

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De vendentibus vinum &c, dicunt quòd Nicholaus le Taverner, Nicholaus Bloundel, Perinus Bloundel, Guyonus Nichol, Ricardus le Torver, Willielmus Chousyn, Perinus Nichol, Perinus le Marchant, et Philippus Counketerre vendiderunt vina contra assisam &c. Ideo ipsi in misericordiâ &c.

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Placita coronæ coram Roberto de Scardeburgh, &c.

De Bolongariis &c, dicunt quòd Johannes de Pastys, Philippus le Pestoure, Guillotus Bele, Coletta la Valaise, Johannes le Deen, Johannes Henr', Radulphus Lucette sunt Bolongarii in parochiâ istâ. Ideo ipsi in misericordiâ.

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De indictatis etiam dicunt quòd Coletta de la Valeise, anno regni domini Regis quarto, felonicè furata fuit in parochiâ istâ quandam patellam et quinque vellera lanæ et unam supertunicam de burello, quæ fuerunt Peroto Payn in parochiâ istâ. Et quòd Guillotus, filius Guilloti Bele, circiter festum Nativitatis Domini, anno regni domini Regis nunc quarto, felonicè furatus fuit in domo Ricardi Teffayn unam camisiam et unam zonam et asportavit. Et quòd idem Guillotus Bele felonicè furatus fuit sex bidentes in parochiâ istâ, quæ fuerunt Petri David. Et quòd Johannes Pyk et Andreas Prous, anno regni domini Regis nunc primo, felonicè furati fuerunt, duas pipas vini, unum ciphum argenteum, et unam fururam pro capitio, quæ fuerunt Guionis Nichol in parochiâ istâ, et asportaverunt. Et quòd Thomas Bele felonicè deprædatus fuit sex garbas bladi de Guillielmo le Feroun, in parochiâ istâ, pretii xij$^{d}$ Turonensium. Et quòd Johannes le Mere furatus fuit quadraginta ceras de lino, pretii iiij$^{s}$ Turonensium, quæ fuerunt Guillemotæ la Chyvalere in parochiâ istâ. Et quod Guillemotus La Mieresse furatus fuit unam supertunicam pretii viij$^{s}$ Turonensium in parochiâ istâ, quæ fuit Jouettæ, filiæ Johannis Dudoyt. Et quòd Johannes de Kenys de parochiâ Sancti Petri de bosco furatus fuit in parochiâ istâ unam arcam, pretii x librarum Turonensium, et asportavit. Et manentes sunt in Insulâ. Ideo capiantur. Postea venerunt prædicti Coletta de la Valeise, Guillotus, filius Guilloti Bele, Thomas Bele, Johannes le Mere et Guillemot la Meresse, et, per Justiciarios singillatim allocuti, qualiter se velint de feloniis prædictis sibi impositis acquietare, dicunt singillatim quòd in nullo sunt culpabiles de feloniis prædictis, et de bono et malo ponunt se super patriam. Et Juratores dicunt, super sacramentum suum, quòd prædicti Coletta, Guillotus, Thomas, Johannes, et Guillmotus, in nullo sunt culpabiles de feloniis prædictis sibi impositis. Ideo ipsi inde quieti. Non sub-traxerunt se &c. Postea Juratores testantur quòd prædicti Guillotus Bele, Johannes Pyk, et Andreas et Johannes de Kenys non sunt inventi in Insulis prædictis, sed subtraxerunt se pro maleficiis prædictis. Et malecreduntur. Ideo exigantur et utlagentur. Nulla habuerunt catalla terras seu tenementa.

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(M. 7.)

— "Scardeburgh."

Parochia de la Vale venit per tresdecem juratores.

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Johannes Poindestre et Johannes Fylot, clerici, Johannes Horibel, Petrus Columbel, et Robertus le Jolyvet, fregerunt domum Johannis Bequerel noctanter in parochiâ istâ, et ipsum ibidem verberaverunt et vulneraverunt, et uxorem ipsius Johannis Bequerel, cum bonis et catallis suis, videlicet, pannis lineis et laneis, ceperunt et abduxerunt.

Postea testatum est quòd prædicti clerici capti fuerunt et liberati Ordinario loci. Ideo nichil de eis. Et quòd alii manentes sunt in patriâ. Ideo capiantur. Postea venerunt prædicti Johannes Horibel et Robertus le Jolyvet, et, per Justiciarios singillatim allocuti, qualiter se velint de feloniis prædictis sibi impositis acquietare, dicunt singillatim quòd in nullo sunt culpabiles de feloniis prædictis, et de bono et malo ponunt se super patriam. Et juratores dicunt, super sacramentum suum, quòd prædicti Johannes Horibel et Robertus le Jolyvet in nullo sunt culpabiles de feloniis prædictis. Ideo ipsi inde quieti. Postea testatum est per Vicecomitem quod prædictus Petrus Columbel non est inventus, sed subtraxit se &c. Et malecreditur. Ideo exigatur et utlagetur. Catalla nulla.

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De insufficienti mensurâ præsentant quod Gullielmus Soulere, Petrus Rengmere, Willielmus Wauter, Johannes Robyn, Petrus de Hometto, Johannes Quesenel, Galfridus Beauvis, Guillielmus, filius Roberti Roland, Johannes Hays, Ricardus, filius Colini Peryn, utuntur mensuris non signatis. Ideo ipsi in misericordiâ.

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De salsantibus congros contra statutum Insularum &c, dicunt quòd Ricardus Bennart consuetus est congros salsare contra statutum &c. Ideo in misericordiâ &c.

(M. 8). —"Scardeburgh."

Parochia Sancti Petri de Portu venit per tresdecem juratores.

De veteribus placitis Coronæ iidem juratores præsentant quòd nichil sciunt. De novis autem præsentant quòd Ranulphus le Cardonel felonicè interfecit Radulphum le Tunturier in domo Roberti Ricardi de Bello Campo, et statim post factum fugit, et posuit se in ecclesiâ Sancti Petri in Portu, et ibidem coram Henrico de Sancto Martino cognovit feloniam prædictam, et abjuravit insulam coram Coronatore—catalla ejus nulla &c. Et quia non fit mentio in rotulis prædicti Henrici de die et anno, prout moris est. Ideo ad judicium de eo.

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Malefactores ignoti de Baionâ interfecerunt quendam hominem ignotum in quâdam navi de Ispaniâ in portu Sancti Petri, et statim post factum fugerunt. Nescitur qui fuerunt, nec quò devenerunt. Et quia non fit mentio in rotulis Henrici de Sancto Martino, tunc Ballivi de die et anno, prout moris est, ideo ad judicium de eo &c.

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Laurencius Amena volens scandere cordas in quâdam navi ad vexillum superponendum, et flatu venti turbinis, cecidit in mari et submersus fuit. Nullus inde malecreditur. Judicium infortunii. Postea testatum est per prædictos Juratores quòd magister navis prædictæ et socii sui

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imprisonati fuerunt pro morte prædictâ, quousque deliberati fuerint per inquisitionem duodecim, et judicium Juratorum coram Galfrido de Hogâ tunc Ballivo, secundum consuetudinem Insulæ. Et, quia non fit mentio in rotulis dicti Galfridi de nominibus eorum qui imprisonati fuerunt &c., ideo ad judicium de eo &c.

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Johannes le Barbier et Martina uxor ejus, capti et imprisonati pro latrocinio, facto Johanni de Maous, de multonibus, dimissi fuerunt per plegium coram Petro de Garyz tunc Ballivo usque ad assisas istas. Et modò non venerunt. Et, quia prædictus Petrus modò non respondet de plegio, coram quo &c., ideo ad judicium de eo. Et prædicti Johannes le Barbier et Martina nichilominùs capiantur. Postea testatum est quòd subtraxerunt se. Et malecreduntur. Ideo exigantur et utlagentur.

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De Usurariis &c, dicunt quòd Jovinus, filius Eliæ de Submonte, mutuo tradidit viginti solidos Johanni Renward usque ad certum diem, per sic quòd ipse ad diem prædictum solveret ei viginti et quinque solidos per usuram. Ideo ipse in misericordiâ. Et afferunt ad quadraginta solidos sterling'.

De trahentibus alios in placitis extra regnum &c, dicunt quòd Isabella la Mieresse citari fecit extra regnum, Constanciæ, Johannem de la Barge et Johannem le Hagneys, ad respondendum ibidem super placitis quæ ad Coronam pertinent. Ideo ipsa in misericordiâ.

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Johanna de Marâ, capta et imprisonata pro furto, facto Ricardo Hays, de burello et frumento, dimissa fuit per plegium usque ad assisas istas coram Ranulpho le Gay, tunc Ballivo &c. Et modò non venit. Ideo capiatur. Et, quia prædictus Ranulphus coram quo &c, modò non respondet de plegio. Ideo ad judicium de eo. Postea testatum est quòd prædicta Johanna non est inventa, sed gratis subtraxit se. Et malecreditur. Ideo exigatur et wavietur &c. Catalla ejus nulla.

De fugantibus in Terris Regis &c., dicunt quòd Thomas Gros fugavit in Terris Regis in parochiâ istâ, et cuniculos cepit et asportavit. Ideo præceptum est Vicecomiti quòd venire faciat eum. Postea Vicecomes retornavit quòd non est inventus, sed gratis subtraxit. Ideo ipse in misericordiâ. Et afferunt ad decem libras Turonenses.

De redditibus subtractis &c., præsentant quòd quidam Matheus Vigir, jam sexdecim annis elapsis, subtraxit se de quodam buscello frumenti annui redditûs, qui domino Regi competit per forisfacturam Bynet, pretium frumenti per annum xij.[d] Turonenses. Ideo Johannes de Roches, Custos Insulæ prædictæ, de medio tempore, videlicet, de sexdecim solidis. Et prædictus Matheus in misericordiâ &c. Et afferunt ad duos solidos.

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M. 9.

Adhuc de placitis Coronæ in Gernereye.

Compertum est per rotulos Ranulphi le Gay, nuper Ballivi istius Insulæ, quòd Johannetus Heribel, dictus Liquet, pro eo quòd noctantér fregit ostium domûs Johannis Beqerel et eum verberavit &c., clamore de Harou levato, et applegiatus fuit usque ad assisas &c. per Robertum Hanloris et Jordanum Herybel, qui modo non habent ipsum, nec idem Johannetus reddidit se primo die Itineris. Ideo ipsi in misericordiâ, et prædictus Johannetus capiatur. Et, quia idem Ranulphus non fecit mentionem in rotulo suo de die et anno, ideo ad judicium de eo. Postea venit prædictus Jonettus, et per Justiciarios allocutus qualiter se velit de prædictis sibi impositis acquietare, dicit quòd in nullo est culpabilis de præmissis sibi impositis, et de bono et malo ponit se super patriam. Et Juratores dicunt, super sacramentum suum, quòd prædictus Johannetus Heribel in nullo est culpabilis de præmissis sibi impositis. Ideo ipse inde quietus.

Compertum est per rotulos Petri de Garris, nuper Ballivi istius Insulæ, quòd Johannes Naon felonicè furatus fuit garbas Colini Wates, et replegiatus fuit usque ad assisas &c. per Matheum de la Couture et Ricardum Naon, qui modo non habent ipsum, nec idem Johannes reddidit se primo die Itineris. Ideo ipsi in misericordiâ, et prædictus Johannes inde capiatur. Postea testatum est quòd prædictus Johannes non est inventus, sed subtraxit se. Et malecreditur. Ideo exigatur et utlagetur. Catalla ejus nulla. Et, quia idem Petrus non fecit mentionem in rotulo suo de die et anno, nec de pretio, ideo ad judicium de eo. Postea venit prædictus Johannes et per Justiciarios allocatus qualiter se velit de feloniâ prædictâ sibi impositâ acquietare, dicit quòd in nullo est culpabilis de feloniâ prædictâ &c. Et de bono et malo ponit se super patriam. Et Juratores dicunt, super sacramentum suum, quòd prædictus Johannes in nullo est culpabilis de feloniâ prædictâ. Ideo ipse inde quietus. Et cesset exigendum de eo &c.

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M. 11.

"Scardeburgh."

Deliberacio Gaolæ earumdem Insularum coram præfatis Justiciariis in Itinere prædicto.

Rogerus de Costilio, de Insulâ de Jereseye, clericus, qui aliàs coram Justiciariis ad ultimas assisas in Insulis indictatus fuit de morte Willielmi Durnaunt, et per Decanum ejusdem Insulæ tanquam clericus et membrum sanctæ ecclesiæ calumpniatus, et secundum consuetudinem Insularum prisonæ Episcopi Constanciensis mancipandus, modò manet in patriâ &c. Ideo præceptum est Vicecomiti quod capiat eum &c. Postea venit prædictus Rogerus, et, super præmissis allocutus qualiter se velit inde acquietare, dicit quòd ipse alias coram Guillielmo Constanciensi Episcopo, loci Ordinario, debitam inde fecit purgationem, et à carcere suo deliberatus fuit, et de

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hoc vocat recordum literarum ipsius Episcopi, quas profert hic, et quæ hoc testantur, in hæc verba. Universis hæc visuris et audituris Guillielmus, permissione divina Constanciensis Episcopus, salutem in Domino. Notum facimus quòd, cum pridem Rogero de Costilio, clerico, de Insulâ de Gerseio, nostrâ diœcesi, fuisset impositum eum personâ Guillielmi Dirnant homicidium perpetrâsse, ac propter impositionem hujusmodi fuisset ipse in eâdem insulâ carceri mancipatus per potenciam secularem, et postmodum Decano nostro de ipsâ Insulâ liberatus, qui eundem clericum nostro Constanciensi carceri mancipavit, inibi detinendum, quousque de sibi impositis, ut præfertur, notitia plenior haberetur; dictus clericus, sic in eodem carcere nostro detentus, asserens se fuisse et esse de homicidio prædicto liberum penitus et immunem, humiliter et cum instanciâ pluries supplicavit ut de eodem homicidio inquireretur, et appropinquaretur sibi super hoc viâ juris, et quòd, si reperiretur innocens de præmissis impositis ei, absolveretur de eisdem, et ad ipsius liberationem procedere curaremus, quâ supplicatione factâ, inquisitoque diligenter et cognito de homicidio supradicto, videlicet, tam de facto principali, quam etiam super famâ, quia clarè nobis non liquet nec constat de facto ipso principali, licet nobis constaret de infamiâ super hoc contra eum: Ideo nos eidem clerico purgationem indiximus, videlicet, quòd se purgaret de ipsâ infamiâ cum undecimâ manu presbiterorum et clericorum. Qui quidem clericus, secundum quod sibi â nobis fuerat injunctum, in formâ juris et modo qui sequitur se purgavit. Ipse vero clericus juravit super sacrosancta Dei evangelia, tacta corporaliter ab eodem, quòd ipse nunquam perpetraverat dictum homicidium, nec ad illud perpetrandum præstiterat consilium, auxilium vel favorem, sed fuerat et erat ab eodem homicidio innocens, inculpabilis, liber penitus, et immunis. Magister autem Gaufridus de Kartereto, Decanus Insulæ prædictæ, Robertus de Kartereto, Simon de Sancto Martino, Johannes de Kalen, Gaufridus de Sancto Martino, Philippus Horman presbiter, Philippus de Sancto Martino senior, Thomas Le Feure, Guillielmus Le Rey, Radulphus Briart, et Philippus de Sancto Martino junior, clerici de prædictâ Insulâ fidedigni, vicini præfati Rogeri et habentes de ipso notitiam pleniorem, producti etiam ab eodem ad purgationem hujusmodi faciendum in ejusdem juris instanciâ, coram nobis personaliter comparentes juraverunt singulariter et successivè supra sacrosancta Dei evangelia tacta corporaliter ab eisdem, quod ipsi credebant dictum Rogerum verum jurâsse fecisseque super præmissis verum et legitimum juramentum. Et ideo nos postmodum, Deum habentes præ oculis, et dictam purgationem legitimam et canonicam reputantes, consideratisque considerandis, et communicato super hæc jurisperitorum consilio, prædictum Rogerum clericum ab ipso homicidio absolvimus in hiis scriptis, ipsum clericum tanquam innocentem super hæc et immunem a dicto carcere liberantes, abireque liberè permittentes. In cujus rei testimonium sigillum nostrum præsentibus literis est appensum. Et inspectis literis prædictis compertum est quòd prædictus Rogerus fecit inde purgationem prout vocat. Ideo ipse inde quietus.

Ranulphus Baudeyn ad ultimas assisas coram Henrico Spigurnel &c. indictatus fuit pro deprædatione factâ Mariæ Ravenel et garcion Magistri Willielmi Lengynnour in parochiâ Sancti Laurencii &c. Et prædictus Ranulphus tunc fugit &c. Ideo præceptum fuit tunc Ballivo quòd exigi faceret eundem Ranulphum &c., de Curiâ scilicet in Curiam &c., secundum consuetudinem istius Insulæ, quousque utlageretur &c., si non comparuerit &c., et si comparuerit, tunc eum caperet et in prisonâ &c., salvo custodiri faceret &c., ita quòd eum haberet coram Justiciaris &c., proximò Itineraturis &c., ad standum rectò &c., secundum legem et consuetudinem &c. Qui quidem Ballivus modò venit, et respondet quòd prædictus Ranulphus infra primam appellationem &c., venit et se reddidit prisonæ &c. Et quòd postea manucaptus fuit usque istas assisas per Johannem Baudeyn et Colinum Palot. Qui quidem manucaptores modò veniunt et reddunt prædictum Ranulphum coram Justiciariis &c. Et dictus Ranulphus, quæsitus qualiter de prædictâ feloniâ se velit acquietare, defendit deprædationem, furtum, omnem feloniam, et quicquid est contra pacem &c., et dicit quòd ipse in nullo est inde culpabilis, et de bono et malo ponit se super patriam &c. Juratores parochiæ Sancti Laurencii dicunt, super sacramentum suum, quòd prædictus Ranulphus in nullo est inde culpabilis, nec se subtraxit pro feloniâ prædictâ &c. Quia dicit quòd ipse est quidam cementarius, et quòd tempore quo fuisset indictatus &c., operabatur in extraneis partibus Normanniæ &c. Ideo ipse inde quietus.

Radulphus Hamound, captus pro eo quòd ipse fregit archam Orengæ de Bovere in parochiâ istâ, et abinde asportavit filum lanæ, ad valenciam quinque solidorum Turonensium, unde per harellam parochiæ prædictæ indictatus est, venit, et, per Justiciarios allocutus qualiter se velit de feloniâ prædictâ sibi impositâ acquietare, dicit quod clericus est, et non potest inde nec debet coram aliquo laico Judice respondere, et super hoc venit. Et super hoc venit Galfridus de Carteret, Decanus Insulæ prædictæ, gerens Vices Episcopi Constanciensis ad clericos petendos &c., et petit ipsum sibi liberari tanquam clericum, &c. Et ei liberatur.

M. 13.

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Adhuc de præsentationibus Insulæ de Gernereye.

Præsentatum est per Harellam de la Belhouse et per duos homines de duodecim Juratoribus euntes cum lanceis secundum consuetudinem &c., quod Guillielmus Arcour fecit quandam purpresturam super viam regiam. Ideo præceptum est Ballivo quòd deleri faciat quicquid sit ad nocumentum, et redigatur in statum pristinum, per visum juratorum, ad custagium ipsius Guillielmi, &c. Et ipse in misericordiâ.

Præsentatum est etiam per Harellam deVale et per duos homines de duodecim juratoribus euntes cum lanceis secundum consuetudinem &c., quòd Johannes de Geneys fecit quandam purpresturam super viam regiam ex opposito domûs suæ. Et quòd Endelot de Mont Sannagetus, filius Johannis Balan, fecit quandam purpresturam super viam regiam ex opposito domûs suæ. Et quod hæredes Petri Follet fecerunt purpresturam in viâ regiâ juxta domum suam, ad dampnum

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domini Regis et nocumentum totius patriæ. Et quòd Johannes de Capellâ fecit quandam purpresturam super viam regiam juxta ortum Hagneffeld, ad dampnum domini Regis et nocumentum &c. Et quòd filius Hagesel' fecit quandam purpresturam juxta eundem ortum ad dampnum &c. Et quòd Rector de Vale fecit quandam purpresturam super viam regiam, ad dampnum domini Regis et nocumentum totius patriæ. Et quòd Ricardus Ereng' et participes sui fecerunt quandam purpresturam super viam regiam juxta domum suam, ad dampnum domini Regis et nocumentum omnium vicinorum. Et quòd Johannes Lammstenē fecit purpresturam super viam regiam, juxta domum suam, ad dampnum domini Regis et nocumentum &c. Et quòd Guillielmus de Plantâ fecit quandam purpresturam in viâ regiâ juxta domum suam, ad dampnum domini Regis et nocumentum &c. Et quòd Johannes Ysent fecit quandam purpresturam super viam regiam apud Plantam, ad dampnum domini Regis et nocumentum &c. Et quòd Johannes Insuel fecit quandam purpresturam super viam regiam apud domum Radulphi Mase, ad dampnum et nocumentum &c. Et quòd Radulphus de Mare fecit quandam purpresturam super viam regiam, ad dampnum domini Regis et nocumentum &c. Et quòd Radulphus de Hamet fecit quandam purpresturam super viam regiam, ad dampnum domini Regis et nocumentum &c. Et quòd Ricardus de Mara fecit quandam purpresturam super viam regiam, ad dampnum domini Regis et nocumentum totius patriæ &c. Et quòd Johannes le Riche fecit quandam purpresturam super viam regiam ad dampnum domini Regis et nocumentum &c. Et quòd Radulphus Mase fecit quandam purpresturam super viam regiam, ad dampnum domini Regis et nocumentum totius patriæ &c. Et quòd Johannes Lyel fecit quandam purpresturam super viam regiam, ad dampnum domini Regis et nocumentum &c. Et quòd Petrus de Geneo fecit quandam purpresturam super viam regiam, ad dampnum domini Regis et nocumentum totius patriæ &c. Ideo præceptum est Vicecomiti quòd prædicta nocumenta prosternantur et deleantur et in pristinum statum redigantur, per visum juratorum, ad custagium prædicti Johannis et aliorum &c. Et iidem Johannes Endelot, hæredes Petri Follet, Johannes filius Hagesel, Rector de Vale, Ricardus Lammstenē, Guillielmus, Johannes, Johannes, Radulphus, Ricardus, Johannes, Radulphus, Johannes, et Petrus in misericordiâ, et quia priùs &c.

Per Triatores—iidem præsentant quod Petrus Bernard, Petrus Salkyn, Cecilia Larker, Radulphus Folloit, Petrus Cabowe, Willielmus Wauter, Petrus de Blundel, Petrus Hervy, Willielmus Blaunchebarbe, Johannes Burnel, Johanna quæ fuit uxor Ricardi de Beaucampe, Johannes Le Hers, Robertus Haddif, Johannes Estur, Petrus de Humet, Vincencius Garyn, Willielmus Wauter, Laurencius Gaillard, Philippus de Dute, Matilda Mercator, Petrus Goy, Willielmus Cheyny, Prior du Vale, Willielmus Robyn, Simon de Sancto Martino, et Petrus de Gariz utuntur falsis mensuris non signatis. Ideo ipsi in misericordia.

Iidem triatores præsentant quod Prior du Vale, Prior de Sancto Clemente, Simon de Sancto Martino, Philippus de Sancto Martino, Johannes de Viver, Radulphus Le Moyne, Robertus de Viver, Radulphus de Beauchamp, Laurencius le Gaylard, Johannes le Viner, Willielmus de Cheyny, Petrus de Gariz, Ranulphus le Gay, Johannes le Moyne, Ricardus Tolley, Petrus Pilet, Johannes Cornaille, Guido Nicole, Ranulphus de Wyc, Henricus de la Mule, Jordanus Discard, Matheus de la Saumarays, et Johannes Destur, die Lunæ proximo post festum Sanctorum Petri et Pauli, anno regni regis nunc quinto, in Prioratu de Insuleto in Parochiâ Sancti Elerii, in adventum Justitiariorum Itinerantium fuerunt ibidem sacramento astricti et confœderati quòd quilibet eorum in quibuscunque causis sive querelis, pro ipsis vel contra ipsos motis vel movendis, alterum foveret et manuteneret, et quòd ipsi unanimi assensu, et unâ voce, omnimodas custumas suas, quibus usi fuerunt, et similiter omnimodas custumas per ipsos pro eorum proficuo ordinatas seu ordinandas, et per eos seu eorum aliquem promulgatas, seu coram præfatis Justitiariis calumpniatas, manutenerent et sustinerent; quas quidem conspirationes et confœderationes illicitas in facto postmodum redigentes et prosequentes, die Mercurii proximo ante festum Sanctæ Margaretæ Virginis, anno supradicto, in præsentiâ prædictorum Justitiariorum surrexerunt, inobedienter astiterunt custumasque per ipsos ordinatas, non debitas et coronæ domini Regis et legi contrariantes, clamaverunt, et tanquam ipsis pertinentes vindicaverunt. Et quia iidem Justitiarii custumas prædictas eis allocare contradixerunt, domino Rege inde inconsulto, præfati Petrus et alii, simulcum aliis circiter numerum quingentorum hominum, verbis acerbis in præsentia Justiciariorum insurgentes, temerariè asserebant se nullo modo, licet perculo vitæ vel membrorum incumberent, custumas prædictas in hâc parte amittere seu dimittere. Qui quidem ignoti, simul cum aliis, conspirationem et confæderationem hujusmodi affirmabant, dicendo alta voce—etiam! etiam! etiam! in contemptum domini Regis et terrorem populi et periculum vitæ prædictorum Justiciariorum. Ideo præceptum est Vicecomiti quòd venire faciat eos &c. Postea venerunt prædicti Laurencius, Johannes le Viner, et omnes alii, et per Justiciarios allocuti de confœderatione et conspiratione prædictis, qualiter se velint inde acquietare, dicunt singillatim quòd ipsi in nullo sunt culpabiles de prædictis confœderatione et conspiratione sibi impositis, et de hoc ponunt se super patriam. Et Juratores dicunt super sacramentum suum quod prædicti Laurentius, et omnes alii, quoad prædictas confæderationes et conspirationes in nullo sunt culpabiles. Ideo ipsi inde quieti &c. Sed quia residuum præsentationis manifestè est in recordo Justiciariorum, de quo non est necesse quod inde arrenentur. Ideo dictum est eis quòd per manucaptionem cujuslibet alterius alteri exspectent inde judicium suum coram præfatis Justiciariis apud Longam Villam in insulâ de Jereseye &c, die Mercurii proximo post festum Sancti Petri quòd dicitur ad vincula, de audiendo judicio suo &c. Postea venit prædictus Henricus (? Philippus) de Sancto Martino, et petiit quòd possit admitti ad finem faciendum cum domino Rege, et admittitur per finem xx$^{s}$. sterlingorum, per plegium Radulphi Cartret. Ad quem diem prædicti Prior du Vale, et omnes alii, præter prædictum Philippum, licet solempniter vocati non venerunt. Ideo dictum est Vicecomiti quòd capiat eos, si &c.

Octava pars Patentium de Anno Reginæ Elizabethæ undecimo.

At Westm. the xi^th^ of Marche, 1568.

Orders in Council of the 11th of March, 1568.

The Lorde Keaper, The Duke of Norff., The Marques of Northampton, The Lorde Steward, The Earle of Bedford, Thearle of Leycester, The Lord Admyrall, The Lorde Chamb^r^layne, Master Vice chamb^r^layne, Master Secretary, Master Chauncellor of the Duchie, Master Chauncelour of Thexchier.

Where complaynte hathe bene lately made unto the Lordes and others of the Quenes Majesties Pryvey Counsell by l^r^̃es̃, as well from Frauncis Chamb^r^layne Esquier, Capitayne and Governour of the Isle of Garnesey, as from the Baylyef and Jurats of the same Isle, of div^r^se Quarrells and Troubles lately growen betwene them concerninge certen Graunts, Confirmacions and other matters of Controv^r^sy, wherein eche partye desyred that Redresse mighte be had to the pacificacion and good quiett of that Isle and the Inhabitaunts of the same, like as their Lordshippes thoughte it not meete for good respects to suffer anie such stryef or devision to be anie longer nurrished, specially amongest suche as aughte cheefly together in good concorde for the well gov^r^ninge of the chardge co̅mitted unto them: So, for the better endinge and quietinge of the said Differences, and establyshinge of pfecte unitie betwene the said Capitayne Baylyef and Juratts, and other thinhabitaunts of the said Isle, their Lordshippes did not onely heare the substaunce of the matter breefely declared before them by suche as were sente hither for that purpose, but co̅mitted also the further pticularities of the same to be harde at good leingthe and reportid unto them by the Rev^r^end Father in God, the Buisshoppe of London, and Richarde Onslowe Esquier, the Quenes Majesties Sollicitour Generall, who by their Lordshippes appoyntemente harde what eche partie coulde alleadge for them selves; and, havinge thereupon informed the said Lordes of the Counsell of the whole state of the cause their Lordshippes, upon the full hearinge and deliberate consider̅acion thereof by conference with the parties that were sente from the said Isles, have for a finall resolucion taken suche order as followeth. Firste, it is by their Lordshippes thoughte necessarye that, before all other thinges, the said Capitayne Baylief and Juratts forgettinge all pryvate or publick Querrells shall reconcile them selves and joyne together in all good fryndshipp and concorde whereby they maye with the more co̅moditie eche of them attende their sev^r^all chardgs. In which case also speciall respecte is to be had that the said Capitayne, as the Quenes Majesties Principall Officer there, be cheefely regarded, obeyed and estemed in suche degree as to the place he holdeth doth belonge, and enjoye suche rights, priviledges and other duties as other Capitaynes holdinge his place have heretofore lawfully had and enjoyed, and by the P^r^rogative of his office do apperteyne unto him, and therein to be assisted and maynteyned by the said Baylief and Juratts to the best of their powrs, who also, in their order and place, are likewise to have that reputacion and obedience geven them that belongeth unto their office and callinge. It is also further ordered that the Baylief and Juratts of the said Isle maye lawfully at all tymes when neede shall require visitte the state of the Castels and Fortificacions there, in suche forme and for suche purposes and intents as be comprised and declared in their li̅bres and priviledges, having in the doinge thereof good regarde by all gentill meanes to exhorte, advise and pswade the Quenes Majesties lovinge and obedyent Subjects there to contynue their endevour and good wills for the transportinge and careadge of stone, sande and other necessaries, at convenyent dayes and tymes as heretofore of late they have done, to the furtheraunce of the Fortificacion of the said Castell and good suretie of those Isles. Item, that the Co̅mission lately pcured by John Chamb^r^layne, concerninge matter of accompts to be taken there of sundry psons, be forthwith put in due execusion accordinge to the tenour and effecte of the same to thende c^r^tificat maye be duly made thereof unto their Lordshippes within such tyme as is lymited by the said Co̅mission. Item, that all Graunts and Confirmacions of Priviledges from the Quenes Majestie and her pgenitors shalbe alwayes inviolably observed, maynteyned and kepte in force, with the credit of the Baylyef and Juratts to be obeyed in all their ordinancs made and to be made for the good Governmente, Suretie and Quietnes of the said Isle. And that noe officer or Mynister of Justice be at anie tyme hereafter resistid, ympeched or ymprysoned for executinge the Sentences, Ordinaunces and Constitucions aforesaid, but maynteyned and assistid accordinge to the Lawes, Usages and Auncyente Customes of the Isle. Item, it is ordered that the Salthowse, the Weights, and Co̅mon Pastures, shall hensforthe be used and applyed by the Captayne or his Farmour accordinge to the priviledges and auncyente customes used tyme oute of mynde there. And yf anie Question and Difficultie shall happen to aryse touchinge those matters, the same to be tryed before the Baylyef and Juratts, aswell by auncyente Recordes as by the Deposicions of honeste psons indiffently chosen accordinge to the Lawes, Usages and auncyente customs of the said Isle. Item, that Edmond Hector shall voluntarely resigne thoffice of procurour accordinge to his submission in that parte, and the Captayne shall, within one moneth nexte after the arryvall of the said Hector in that Isle, name and appoynte an other procurour in his steede havinge, alwayes speciall regarde, as farre forthe as in hym shall lye, that no officers or Mynisters of Justice be nominated or admitted in the said Isle for and in the name of the Quenes Majestie other then suche as will fayethfully and willingly further the ordinaunces of Justice and maynteyne the same as the necessitie of the tyme shall require. Item, it is ordered that the Quenes Majesties L̃res to the Baylyef and Juratts touchinge the sepacion forev^r^ of those Isles from the Diocesse of Constancs and to be ppetually united to the Diocesse of Winchester shall not from hensforthe be broughte into anie Question, but shalbe followed and executid accordinge to the tenour and effecte of the same. And the Rev^r^end Father in God the Bushoppe of Winchester, beinge p^r^sently constitutid ordinary in the said Isles, and his Successours, shall from tyme to tyme, execute that chardge, and, upon, p^r^sentemente from the

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Quenes Majestie or the Captayne, shall institute, inducte and authorise the Deanes, Mynisters, Curatts and Scholemasters, suche as by his good discrecion maye be thoughte mete to execute those chardges according to the Langage, Countrie, Qualitie, and Disposicion of the People there, and as beste maye be for the advauncemente and mayntenaunce of Godde's Holy Worde and Glorie in the said Isles. Foreseinge alwayes that neither the Deane for the tyme being, nor anie other Eccliasticall officer within the said Isles, shall innovate anie thinge nor take nor exacte anie more, directly or indirectly, for Pbacions of Testaments, Amrcements or suche like, then onely such duties and somes of money as hath bene heretofore aunciently accustomed to be payd in the said Isles in that behalfe, neither shall the said Deane compell anie of thinhabitants of the said Isle to repaire into England for anie Eccliasticall cause, but that the same maye be determyned there by Comission, unles it be by assente of bothe parties accordinge to the auncyent Usages of the said Isle. Item, the Scholehowse at the Fryers in Garnesey, foundid and rentid by the Quene's Majestie, shalbe forthwth put in order for the purpose appoyntid by the consente of the Captayne in the prsence of the Baylyef and Jurats and of his Brother George Chamberlayne, as in effecte appeareth by the scedule hereunto annexed. Item, it is orderid that the Baylyef, assistid with the Juratts, shall not omitt upon any cause the administracion of Justice accordinge to the auncyente Laws and Customes there. Item, it is further ordeyned that all controvrsies or mislikinges that shall at anie tyme hereafter chaunce betwene the Captayne Baylyef and Juratts shalbe forthwith advisedly considered at some tyme and place to be appoyntid by the Captayne, where, by mutuall conference they shall quietly appease and reforme all controvrsies and mislikinges, so as, eche of them beinge aydinge and assistinge to the others, they may not onely avoyde the inconveniences and daungers that were like to followe of the contrary, but be also the better able to attende their chardge and see to the due observacion of suche good constitucions as shalbe by them establyshed, as well for the good Govrnemente and Defence of the Isle as for the contynuynge of thinhabitaunts of the same in good order and obedyence. And, in case anie such disorder shoulde fortune to fall oute as maye not well be compoundid and redressid amongest them selves there within the space of fortie dayes, that it shall then be lawfull for anie that will doe the same to repayre ovrhither to seeke for reformacion thereof by meanes of the Lordes and others of the Pryvey Counsell here without anie lett or restrainte. As touchinge the ymprisonamente of the Deane and Juratts, the same is orderid at this tyme to be passid ovr, and eche partie to beare their own Chardges; and nevrtheles it is also therewithall orderid that the Captayne shall not hereafter ymprison anie pson of the said Isle withoute the order of Justice, unles it be for martiall matters and formes, in wch cases the Captayne hathe bene accustomed to ympryson offendours as the custom in that parte pmitteth. Item, where it is enformed that crten somes of money have bene exactid and taken for the chardges of Lewis Devicke and Peter Hamelyn, Rycharde Fever and Noel Lehowe, popular pcurours agaynste the Baylyef, Juratts and Deane, forasmuche as the same money appeareth to have bene levied of Churche Goodes and amongeste, the comon People, it is ordered that, because the said parties have pvid no juste cause of greefe in anie of these matters before mencioned, the Captayne, Baylyef and Juratts, unitinge them selfes together, shall call before them suche as have levied the said money, and cause the same to be by them restorid unto the Churches and People from whome it was had, in suche sorte as shalbe thoughte convenient. All which articles before mencioned their Lordshippes not onely comaunded to be entred into the Counsell Booke to remayne of Recorde, but also gave order that the same should be enrolled in the Chauncery, and the copies thereof subscribed with their Lorshippes handes to be sevrally sente, as well to the Captayne as to the Baylyef and Juratts of the said Isle, with comaundemente in the Quenes Majesties name to kepe and observe the same.

Le xxvij jour du Mois de Mars l'an millvc lxviij estant assemblez au lieu et demaine de la place des Freres, prez de la Ville de Saint Pierie Port, cest ascavr, Noble home Francois Chamberlain Escuier, Capne Gouverneur, Gñal en l'Isle de Guerneze soubz l'excellente Majesté de nre Souveraīe Dame Elizabeth, par la Grace de Dieu Raigne d' Angleterre de France et de Hircland, Defenscure de la Foy, &c., et en la pnce de Thomas Compturn, Baillif Nicholas de la Court, Thomas Effart, John Blondell, Guillome Beau, Nicholas Martyn, Thomas le Marchaunte, Nicholas Pageot et Nichās le Mesurier, Jurez à ce pntz pareillement les Cures et Coñestables des Poisses de la dicte Isle, auvecques la douzaine de la Paroisse de Sainct Pierre Port, ledict Fr' nre Capitaine, de sa benevolence, au nom de nre dicte Souveraīe Dame la Raigne, et suivam le gracieux vouloir et plaisir de ladicte Majesté, signifie audit Fr' par ces Lrēs a baille et delivre ausdicts Baillif et Jurez et Estats de ladicte Isle, et par le consentemēte à bon advis des Comissaires de ladicte Majesté, cest ascavr, dempuis le Fosse là où la Fontaine souloit estre jusque à continuer ledict Fosse à respondre à la grande Porte de bas qui sera lentre à la Maison et Terre, estant dedans ledict clos dempart le dicte Fosse et Porte, pour en user poceder et resiovir à jamais à lusage et comodite de la grande Iscolle, appellee Lescolle de Gramaire de nre Souveraīe Dame Elizabeth Raigne d' Angleterre, avecq. la somme de vingt livres starling, pour subvenir à la reparation de ladict Maison et lieu de ladicte Escolle, pcelle de soirsante livres starling, et le reste de ladict somme, qui est quarante ll starll, est demeuree audict Fr Capitaine par lassente dudicte Baillif et Jurez et Estates du Pays, pour estre ēployes aux bastimēs et edifices de la dicte Majesté en ceste dicte Isle par ledt sieur Capitaine.

To our very good Lorde the L. Keaper of the Greate Seale.

After our righte hartie comendacions to your good Lordshippe upon complaynte heretofore made unto us by the Captayne and certen of thinhabitaunts of the Isle of Garnesey on the one partie and the Baylyef Juratts and Deane there on thother partie, touchinge such differences as have lately growen betwene them, We have in thende, as your Lordshipp knoweth, taken suche order for the redresse and full pacificacion of those matters as is conteyned in the copie thereof hereinclosed

and, like as we have caused the same order to be entrid into the Cousell Booke here, so have We also, for good respects, thoughte conveniente to praye your Lordshipp to cause the same in like manner to be enrolled in the Chauncery, to thentente it maye also remayne of Recorde there, and serve, yf occasion shall so require, as a p^r^sidente to rule other like cases by hereafter that shall happen to fall oute in contrav^r^sye in the said Isle. And so we bid your good Lordshippe righte hartely well to fare. From Westm. the xiii^th^ of Marche 1568. Your good Lordshippes assured lovinge fryndes, T. NORFFOLK. W. NORTHS. E. CLYNTON. W. HOWARD. W. CECILL.

This is a true and authentic copy from the original Record remaining in the Chapel of the Rolls, having been examined.

3rd June, 1847. THOMAS PALMER, *Ass. Record Keeper.*

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At Richmonde the 9^th^ of October 1580.

An Order set downe by the Lords in certaine causes dependinge before them uppon complaint of the Inhabitantes of Her Maiesties Isle of Garnezey.

Orders in Council of the 9th of October, 1580.

First, Whereas complainte is made unto us that greater sommes are exacted for custome of wares and marchandizes uppon Straungers then are conteined in the Booke of the Extent in the Article intituled "La petite coustume," and Sir Thomas Leyghton, Her Ma^ties^ Governour, verifieth in his answere that there is no more custome taken by him of Straungers goods then was in Sir Richard Weston's time and longe before him and of all Governours since; where w^th^ it appeareth not by any recorde that the inhabitants have at anie time before ben grieved: It is ordered that the lyke rate of custome and none other, shall be from hence forth taken of the said Straungers goods, as was ordinarilie payd in Sir Richard Weston's and Sir Leonard Chamberlaine's times, Governors of that Isle.

And, for the more certaine execucõn hereof, y^t^ suche bookes of the customes payd and receaved in the times of the sayd Sir Richard Weston and Sir Leonard Chamberlaine as remaine within the Isle in the hands of the newe Receaver, or suche as have ben in that office heretofore or anie other person, shall forthwith, or as convenientlie as maye be, be exhibited to the Baillife and Juratts who shall examine the same, and, making an abstract of the most usuall payements in the times afore sayd, shall deliver one copie thereof to Sir Thomas Leyghton and send an other copie thereof to we the Lords of Her Ma^tie's^ Privie Counsell, to receave suche further order there in as shall be advised uppon. The lyke ys ordered for payements for ankerage, that no other rate be taken then was ordinarilie taken in the times of the fore sayd Governours.

Item, whereas they complaine y. they are restrained from appeales: It is ordered that it shal be lawfull for anie of the Inhabitants of y^t^ Isle, and all other finding themselves greived with anie judiciall decree, sentence or Judgment made & given by the Baillyffe & Juratts of that Isle, to appeale from the same to Her Majesty and the Lords of Her Privy Counsell, so as the same be made at the time of suche decree, sentence or Judgement, or wythin fifteene dayes after notice of the same. Provided that it shall not be lawfull to appeale in anie cause criminall, or of correction, nor from the execucõn of any order taken in their Court of Chief Pleas, nor in cries of Haro, nor for anie matter moveable not exceeding the somme of ten pounds Sterling of England. Provided furthermore y^t^ no appeale be made from anie decree y^t^ is not finall, but onely from decrees, sentences and Judgements definitive.

Provided also y^t^ the partie appellant shall effectuallie prosecute and end his appeale within one yeare & a daye if he be not lett by anie lawfull impediment, and shall put in sureties so to prosecute his said appeale, and to paye the costs and chardges of his adversarie, in case it shall be founde y^t^ he had not good cause to appeale, as the ancient custome of that Isle seemeth to have ben.

Item, that the partie appealant shall have under the Seale of the Isle an instrument conteining all the acts & proceedings of y^t^ cause wherein he shall appeale, readie to be shewed here when neede shall require.

And, for the better execucõn hereof, y^t^ the Bailliffe and Juratts shall cause to be recorded in the acts of theire courts the plaintifs declaracõn, and all other matters pleaded by anye of the parties, together with the deposicõns of witnesses examined in such causes, and Instruments or other profe exhibited, and generallie the pticuler proceedings of everie Courte daye; and uppon everie appeale made from them shall deliver unto the appellants, under the Seale of the Isle, the copies of theire sayd acts concerning their perticuler causes, the saiyd appellants paiying to the Greffier such feeas as heretofore for lyke acts have been usuall.

Item, whereas they complaine of want of due administracõn of Justice through the libertie, the Bailliffe and Jurats do take unto them selves to directe their Judgements by presidents, wherein there is neyther certainety nor rule of Justice (as by the late Commissioners sent thither by authoritie from Her Majesty to informe themselves of the true state of y^t^ Isle It hath ben reported to us), forsaking the Customarye of Normandie whereunto they should holde them selves in all points not restrained or supplied by the Booke of Precepts & Booke of Extente: It is ordered that the sayd Bailliff and Jurats, in the administracõn of Justice, shall keepe & observe the booke of precept & the booke of extent, so far forth as they be not repugnant to anie order now or heretofore taken by Her Majesty, or any Her progenitors, or by the Lords of Her or theire Privy Counsell. And that, in all matters not restrained by the Booke of Precept & extent or other order afore sayd, they shall follow the Customarie of Normandie, and according to the customes thereof minister justice within the said Isle.

Provided that, forasmuche as the manner of processe & differences of Courts & forms of

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proceedings therein of long time used in y^t Isle can hardly be reduced to the formes prescribed by the Customary of Normandie: It shall be lawfull for the Bailliffe and Jurats to retaine the sayd difference of court with the days & forme of proceeding therein, as heretofore hath ben usuall, Unlesse in any theire Courts of Chief Pleas they shall, by assent of the States of the Isle, agree uppon anie orders tending to the abridgement of length of sutes.

And, forasmuche as it is reported that there be divers customes differing from the Customary of Normandie, which concerne right of succession, partage, dower, retraicts, & other lyke matters, which cannot well be altered and yet are thought to be few in number: The Baillif & Jurats shall joyne unto them twelve other persons of the most ancient & best experienced in the Isle, to be named by the Governor, & shall alltogether conferre the sayd customes (not perteining to the maner of proceeding but to the causes before expressed and other of like nature) w^th the Customary of Normandie corrected & amended in the reigne of King Henry the 2 of Fraunce, in matters touching the abridgment of length of sutes; & suche as they shall finde differente from the sayd Customary shall put in writing, and send the same to the Lords of Her Ma^tie's Privie Counsell, before Easter next, to receive their order therein. Provided that in the mean time, until further order be taken touching such customes, it shall be lawfull for the Bailliff and Juratts to follow and put in execucōn such of the said customes as they can shew have ben used there time out of minde, & after order geven by the Lords that they do nothing by conlo^r of any custome other than suche as shall be allowed by the said Lords.

Item, whereas it appeareth, as well by their Complaints as by the reports of the Commissioners of late sent unto the Isle, y^t in the time of ffrancis Chamberlaine divers of the inhabitants had purchased certaine rents and lands belonging to her Ma^ty by warrant of Her Majesty's Commission, & that, havinge receaved theire conveiance in writing under the hands of divers of the Commissioners appointed for that cause, & paid their money, the sayd conveyances were left unperfect for y^t they were not sealed with the seale of the Isle according to the tenor of the said Commission: It is ordered y^t Commission shall be directed to the Governor and Bailiff for the sealing of the said Conveyances. So as the chardge thereof shall be borne by them that are to receave the benefit thereof.

Item, whereas sondry of the Inhabitants find themselves greived with a sentence geven against them touching the matters of camparts, & have exhibited an humble petition requiring libertie to make and prosecute their appeale from the sayd judgement geven for camparts or to take other remedie by order of Justice, & it is found reasonable by Her Ma^tie's learned Counsell in the Law that in this case they should be releived: It is ordered that it shall be lawfull for so many of the inhabitants as are charged by the said sentence with payment of campart, y^t is to say as many of the tenants of the fee of S^t Michaele as holde any part thereof charged with two quints La Verge, to make a letter of attorney to such as they shall lyke to name, giving him or them thereby authoritie to appeale and to prosecute the same before such Delegates as shall be named here by the Lords of Her Ma^tie's Privy Counsell, where it is meante theire sayd cause shall be heard and determined, as the place most fitte for the choysse of meete judges & retaining of such counsellors as to both parties shall be thought meete and necessary.

Lastly, where the late Commissioners made report that the rolles for gathering Her Majesty's rentes were defaced uppon purpose to have made a newe booke under the seale of the Isle of all the sayd rents for the direction of the Receever: It is ordered that the purpose of the Baillif and Juratts aforesayd shall be forthwith put in execucōn, & that one booke shall be made out of the said rolles with the dirrecōn & assistance of the new receaver and the oversight of the Governor, for the gathering of the sayd rents, whereof one copie shall remaine with the sayd Bailiffe & Jurats & an other be delivered to Her Majesty's Receaver under some authentike forme, sealed with the Seale of the Isle.

Et sont ainsi signés

T. Bromley Canc'.

W. Burgley E Lyncoln

R Leycester. K Hunsdon

J. Knollys

Ch. Hatton. fra Walsingham

Chas. Lefebvre

*Greffier de la Reine.*

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Orders sett downe by the Lords of Her Majesty's most honorable Privie Counsell touchinge the Isle of Gernezey, xxx. July 1581.

Whereas heretofore, uppon complainte exhibited unto their Lordships by Sir Thomas Leyghton, Knight, Capten of Her Ma^tie's Isle of Gernezey, concerning sondrie disorders comitted and maintained by the Baillife & certaine of the Jurates of the sayd Isle to the greate prejudice of Her Ma^ties' right and service, It pleased their Lordships to sende for W^m. Beauvoyr, Baillife; Nicholas Martin, & Henrie Beauvoyr, Jurates; Their sayd Lordships, havinge att severall times heard what both parties could alledge, uppon good deliberacōn for the endinge of all matters in variance & establishing of good peace and unitie in the said Isle, have thought meet to take suche order in certaine points which were in controversie between them, as followeth.

Ffirst, whereas, about a year sithe, uppon the repaire hither of certaine Inhabitants of the said Isle, as populer procurers, to complaine against the sayd Sir Thomas Leyghton (allbeit the same were without cause, as it then appeared, in that they were punished for the same), it pleased their Lordships to sett downe certaine orders meete to be observed in that Isle, the cariage

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whereof was comitted to the sayd persons at their retorne, with Letters unto the Capten, Baillife and Jurats for a contribucōn to be made in respect of their poverties & of the charge w^ch^ the sayd persones had ben at in attendinge here, to be levied of suche as wolde voluntarilie geve anie thinge towardes the same; ffor as much as some doubt hathe sithe arisen, whether the same should have been generallie levied uppon all the Inhabitants of the sayd Isle, as in comon services for the behoofe of them all hath ben heretofore accustomed, or onelie of suche as, of their owne free will and accorde for their owne particular Interests, wold be contented to contribute any thinge towards that charge: Their Lordships have declared their oppinion therein, that, seinge the said populer procurers were not authorized in the name of the whole Isle, but from certaine particular Inhabitants, the sayd contribucōn & collecc̄on should be onelie levied of suche as did move them to complaine or as wold voluntarilie contribute therto, and not be imposed uppon the generallitie. Neverthelesse the sayd Capten, his Lieutenant, or anie other Officers, shall not by any meanes directlie or indirectlie empeach, hinder or countermaund anie person to contribute therto that w^ch^ of his owne free will he shall be contented to geve towardes the sayd charge.

Secondlie, whereas there hath ben some controversie touchinge the keepinge of the Weights of the said Isle, and about a certaine house in the church-yarde, wherein it is sayd that of ancient time the same Weightes were wont to be kept: It is ordered by their Lordships that the sayd Weightes shall be brought unto the sayde house, & kept by suche a convenient person as the Governor shall appointe for that purpose, in suche sorte everie man may *freelie* resorte unto the sayde Weightes; and the peaceable possession of the sayd house and Weightes shall remaine to the sayd Governor as in Her Majesty's right, according to the Order taken by their Lordships in the yeare 1568, w^ch^ their Lordships meaninge is should still stand in force untill suche time as the Baillife and Jurates (w^ch^ pretende title to the same) shall shewe better right thereto then hathe ben hitherto declared: And touchinge the comon pasture Salte howsse, their Lordships thinke meete that the order made in the said yeare of 1568 touching these things should allso stand in force and be observed accordinglie.

And, whereas sundrie doubts and questions have ben made touchinge the certeintie of Her Majesty's Revenues, rates of Custome & other dueties appertaining unto Her Highness within the sayd Isle: It is ordered that the Baillif and Jurats shall make a trewe and particular booke of the collecting of the sayd revenues and rentes and rates of Customes, &c., with the assistance of the Capten, or, in his absence, of his Lieutenant, and of the Receyvors & other Her Majesty's Officers or farmers, according to suche bookes, roles and rentalls as are remaining in the custodie of the said Officers; and, for defaulte of such proofes, to make a dewe inquisicōn thereof by the Othes of indifferent and not suspected persones w^ch^ can declare the contents & lykelyhood of the same. And a copie of the booke, so made & agreed on by the Governor, or his Lieutenant, in his absence, the Baillife, Jurates, Receyvor and other Her Majesty's Officers, to be sent hither under the Seales of the sayd Gouvernor and Isle, to be bothe here and there registered, to remaine of recorde hereafter; & this booke to be perfected and sent over by the first daye of Maye next ensuing. And, in case it shall so fall out that they shall not agree about the making of the sayde booke, then eche partie to advertise their Lordships before the sayd daye what they have dontherein, to the intent their Lordships maie take further order accordinglie.

Item, the sayd Bailliffe & Jurates shall cause the Dozen of St. Peter's Port forthwith, uppon the receipt herof, with as much expedicōn as convenientlie maie be, to make a trewe booke for the collectinge of such Her Majesty's rentes in that Isle as are called Fferme, Brasillage and Cotillage, accordinge to the booke of the Extente, and to deliver the same to Her Majesty's Receyvor there.

And, touching the Campard of the fee of St. Michael, it is ordered that Her Majesty, accordinge to a sentence there given in that behalf, shall remain in the possession of the same, and that the parties which have appealed from that sentence shall prosecute their appeale before the first daye of Januarie next ensuinge, according to a former order made by their Lordships A° 1580 in that behalfe, putting in suffitient sureties to paye the arrerages and all costs and charges if it be founde that they had no just cause to appeal.

And, whereas there dependeth a certaine matter in controversie between Her Majesty's Procurer & James Guille & Jaques Allez for a certaine fief termed of Alliens demanded by the said Procurer, viz. of the said Guille for John Discarte fyve cabots of wheat, and of the said Allez for Collas Vauriouf for three cabots of wheat, according to the ancient bookes of former Receyvors & ffermers, even as other Tenn̄ts mencioned in the sayd bookes are said to do; fforasmuch as, by reason of an appeale made by the said Procureur from a sentence geven in that Isle by the Bailliffe & Jurates, the sayd matter remaineth as yet undecided: The Bailiffe and Jurates shall, upon the receipt hereof, call the said Guille & Allez before them, & will them to pay the sayd fieffe as other have don & doe: or else, within xx^tie^ daies warninge to be geven by Her Majesty's Procurer unto them, to repaire hither to answer the said appeale, & to declare such right as they or anie of them may pretende to the contrarie.

And, whereas the sayd Bailliffe & Jurates were comanded by a former order from their Lordships to sett downein writing the Lawes and Customes used & observed in that Isle, & thereof to make a certificate unto their Lordships (which hath not yet ben don): It is ordered by their Lordships that the Bailiffe & Jurates, with the assistance of the Capten, or, in his absence of his Lieutenant, & Her Majesty's Procurer, shall jointlie make such a booke of the sayd Lawes and Customs so farre forthe as they all can agree amonge themselves touching the same. And, if they shall disagree in anie pointe, then it is ordered that the Bailliffe & Jurates for their parts shall set downe in writing and send unto their Lordships their oppinions touching that pointe or matter which is doubted of, and the said Capten, or his Lieutenant, and Her Majesty's Procurer, to doe the lyke, to be there uppon decided and determined by their sayd

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Lordships with the advise of the Judges & others of Her Majesty's Learned Counsell what is to be holden and observed therein; and in the meane time the rest of the orders made by their Lordships heretofore, A° 1568 et 1580, to stand and be in force still.

And finallie, forasmuch as Will^m. Beauvoyr, now late Bailliffe, Nicholas Martin & Henrie Beauvoyr, Jurats, have, bothe in their owne name and in the name of the rest of the sayd Isle, against whom Sir Thomas Leyghton exhibited his complainte, declared before their Lordships that they are sorie to have geven anie cause of displeasure unto their sayd Capten against them, and that they all meane to doe better hereafter, and so to behave themselves as they trust to geve him no just cause of offence: Heruppon their Lordships have earnestlie required the said Capten to remitte that which is past, and to staye his further proceeding in the proofe and triall of any faultes wherewith he hath chardged them or may chardge them, and to receave them to his former favour; whereto, att their L.Ls requeste, he hath yelded; thereuppon, with some good admonitions so to demeane them selves hereafter as that there may be no just cause by them offred of anie further complainte, the above named Bailliffe and Jurates were dismissed and licenced to depart & retorne home.

And, last of all, whereas the sayd William Beauvoyr, late Bailliffe, Nicholas Martin and Henry Beauvoyr, Jurats, have of their owne free will & accorde made suite unto their L.Ls that they might be discharged of their sayd offices of Bailliffe & Jurates, and that by their L.Ls' appointment some others might be chosen to supplie their places; Their L.Ls' pleasure hereuppon was that, by Letters from hence, so much sholde be signified unto the Inhabitants of the sayd Isle, requiring them to proceade to the election of others in their roomes according to the custome and manner of the sayd Isle.

The Lord Chancellor. — The Earle of Leycester.
The Lord Treasurer. — Sir Francis Knolles.
The Earle of Bedford. — Sir Christopher Hatton.

Chas. Lefebvre, *Greffier de la Reine.*

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At the Court at Grenewich, the nynth of June, 1605.

Aunswers of the Lords of his Ma^ts Privie Counsaile to the proposicõns or requests exhibited to their L.Ls: by the Deputies of the Isle of Guarnzey in y^e behalf of the Inhabitants of y^e said Isle.

Orders in Council of the 9th of June, 1605.

Whereas the Inhabitants of the Isle of Guernzey have exhibited certaine Articles to His Ma^tie concerning the Goverment of that Isle, the consideracõn whereof being by his Highnes referred to their L.Ls. of His Ma^ts Privie Counsell; Although it is to be presumed that His Ma^tie, in his Princely care of his loving Subjects of that Isle, as well as of other his dominions, will alwaies (in his wisdome) make choise of such Captaines or Governors as shal be of discreete and temperate cariage: Nevertheless, for the farther satisfaction and contentment of the Inhabitants, of whose loyaltie and affection to His Majestie and the State He remayneth so assured, and for the establishing of a certaine course in the goverment hereafter, their Lo^ps have made these answeres to their demandes.

Ffirst, for answere to their proposicõn touchinge the authoritie of the Governor for cõmitting of men to Prison in that Isle: It is thought meete the Governor shall not be restrayned to cõmitt any Islander to Prison upon such cause as he shall thincke to have justlie deserved imprisonment: But, forasmuch as everie particular or private offence w^ch deserveth restraint doth not admitt the laying on of irons, putting into the dungeon, or longe imprisonment, It is therefore thought fitt that no person shall be restrayned or kept in prison by the cõmittment of the Governor longer tyme than the space of ffower and twentie howres, nor be laied in irons, nor put into the dungeon, unlesse the partie stand charged with some such matter as is of higher nature then a private offence, and may concerne him in his loyaltie to the Kings Majestie's person, or to the State; In w^ch case the Bailiffe and Jurates (if the matter be such as may without daunger be imparted to so many) are to be made acquainted with the cause of his cõmittment; But, if the Governor shale finde it daungerous or inconvenient so farr foorth to reveale it as to acquaint them or any of them w^th it, It ought to be left to his discrecõn how to proceede both for the tyme & manner of imprisonment and for reteyning the cause private to himself: Alwaies to be regarded that the Governor cõmitt not to prison the Bailiffe, or any of the Juratts, unlesse it be for some such great cause concerning the King's Ma^tie or the State as is before mentioned.

Moreover, to the motion they make for some order to be prescribed towching the charge for provision of Armo^r and other munitions: It is answered, That, whereas there may be occasion for the better guard, defence and preservacõn of the Isle, to make from tyme to tyme provision of Armo^r, Weapon and such like furniture, in this case, as the Captaine is by His Majesty trusted with the charge & Goverment of the whole Island, so in all those matters that concerne the preservacõn and defence of the Isle the cheefe order & direction dependeth upon the care & comaundement of the Governor or Captaine: and therefore, as in that behalf it is left to him to take that order for those provisions that shalbe most convenient, So their L.Ls do not think it fitt that he shall impose any Assesment or Taxe, thereby to charge the Inhabitants for the said provisions, without conference had with the Bailiffe & Juratts, and by their consent and agreement.

To their request for the setling of some course in the nominacõn of Gunners and for allowance to be given them: Their Lo^ps do thincke it agreable to reason, and the authoritie given to all other Captaines that have like charge and comaundement in Martiall affaires, that the

GUERNSEY.

Orders in Council of the 9th of June, 1605.

Captaine of the Isle shall from tyme to tyme have the nominacōn of such persons as shalbe thought fitt in the circuite of the Isle to be appointed for Gunners upon such occasion as in his discrecōn shall be thought requisite; wherein nevertheless their Lo^ps^ do not meane that there shall further allowance be given to those Gunners by the Islanders than auncientlie hath bin accustomed or shall be thought fitt by themselves upon any extraordinarie occasion.

And, whereas they desire some order to be taken that they may not be burthened as heretofere w^th^ the troble & charge of carriages for the fortification of the Castle: In this case their L.L.s do not doubt but they (as all other His Ma^ties^ subjects) wilbe willing to furnish such carriages as hath ben accustomed or shall be fit to be undertaken for the service of his M^tie^ & strengthening and defence of the Isle; and, if further burthen then is necessary and convenient should be exacted of them therein, Upon complaint thereof made, their L.L.s will take that order therein that shalbe convenient.

And, to their exception mooved against the attendance of the retynue heretofore used: Their Lo^ps^ do thincke meete that it be left to the discrecōn of the Governor to make choise of such able persons of the Islanders as shalbe thought fitt from tyme to tyme to be in a readynes for the better defence of the same; nevertheles it is not meant hereby that any particular person of the Island shall be burthened more one then other, but that the attendance for such services shall be equallie apportioned in the generalitie of the Island.

Ffurthermore, where they make request that they may be authorized and allowed to visitt the Castle as they have donne in tymes past: although their L.L.s do conceave there shall be no cause to doubt of the care of the Captaine whome his Ma^tie^ doth trust with the charge and goverment of the Isle, nevertheles, for the better satisfaction of the Islanders, if they shall make request to the Governor to see the state of the Castle, it is not to be doubted but in friendlie manner the Governor will admitt them to vew the same in such sorte as hetherto alwaies hath ben accustomed.

Concerning their demand for encrease of wages to the Bailiffes: When His Majestie shall be certified the true state of his Revenewes and profitte of that Isle by such Commissioners as shalbe sent thether, and by what convenient meanes the same may be donne without encrease of charge to His Majestie, or taking the same out of the Governor's entertainment and allowance, there may such consideracōn be had thereof as shalbe thought convenient.

And to their demand that the Bailiffe may be nominated by the King himself and not by the Governor: It is answered that, in regard alwaies heeretofore the Bailiffe hath ben nominated by the Captaine, Their L.Ls do see no cause therein to mistrust the upright and indifferent choise of the Governor, considering the Bailiffe is a person appointed to do justice betweene partie and partie, and that, both in this and all other causes, there is leave given them, both to inform His Majesty and the Lordes, if the Governor should take any indirect courses, as there is also appeale for the partie greeved.

To the request, that the Booke of their Lawes of that Isle made Anno 1583, but remayning imperfect and supposed to be in many poyntes erronious, may be re-examined, reformed and made perfect: It is answered, that the Bailiffe and Juratts of Guernzey, calling to them such assistance as the general Estates of the whole Isle shall holde to be most sufficient, both for their understanding and integritie, shall sett downe a faire booke agreeablie to the local Customes which that Isle hath ever observed in the course of justice amonge themselves, w^ch^ being orderly made up, they shall present the same to the Lordes of the Privy Counsell and from them receave either correction or confirmation as in their wisedomes, after conference with the compilors thereof, shall be thought best for the goverment.

Touching the Book of Extent of His Ma^ties^ Revenewes in that Isle, which they desire, for the like causes either of imperfection or of error, to be renewed and reformed: It is answered that, although it may seeme somewhat inconvenient to call things of that nature in question that have bin in use and acknowledged for longe tyme, nevertheles that, with as much speede as convenientlie may be, there shall a Commission be directed to some chosen persons of understanding and good qualitie for the dilligent examination of the particularities of the saide Booke of Extent, and for the fynding out of the true state of the saide Revenewes in everie point, according to such good & sufficient proofes as shalbe made by deedes & evidences to be produced, who shall thereupon yeald a due accompt of this charge, & trust comitted unto them unto the Lordes of the Counsell, that such further resolucōn may be taken thereon as shalbe meete.

To the request, that the Governor may not take from the Inhabitants muttons or any victuale of that Island (other then such as is due & appointed to be yealded as rent towards his entertainment by the late Record & Extent of His Ma^ties^ Revenewes) at a lower rate then shall be agreed to betwixt them: It is answered, that the Governor shall content himself with one hundred muttons by the yeare to be furnished and served by the Countrey at such price as shalbe rated and sett downe by men indifferent and such as can judge of their value; or as shall be agreable to the rate of the markete at that tyme; and that the like order shall be observed for the proportion of such a quantie of butter to be served by the Countrey to the Governor as heretofore hath usuallie bin yealded.

In like sort, concerning the provisions or comodities brought into the Isle by the Inhabitants, or others either out of England or from other places; To the request that the Governor may not, for provision of the Castle, take any of the said comodities at lower rates then shall be agreed on with the partes that sell the same: It is answered that the Governor is not to require any of the said comodities at other rates or prizes then shalbe agreed on with those that are to sell them: but, because it is meete that the Castle be alwaies sufficientlie furnished of all such comodities as the Governor shall finde needefull, therefore the preemption of any of the said comodities ought to be yealded unto him, but not any advantage of taking at a lower rate against the will of the seller.

GUERNSEY.

Orders in Council of the 9th of June, 1605.

To the request, that they may not be constrained to deliver their rent wheat into the Castle, but that it may suffice to deliver it according to auncient custome at the King's Grange in the Towne of S^t^ Peter's Port: It is answered that this is to be graunted, so as two hundred quarters be delivered yearelie into the Castle for a certaine provision, and fower hundred in time of necessity. This being observed, the rest may be delivered into the Grange as it is desired.

Moreover, where it is desired that the comon pastures, landes and rents belonging to the poore, & certaine closes pretended to belonge to the Church of S^t^ Peter's Port, may be restored: It is answered, that the Commissioners to be sent into that Isle, as is before said in the article touching the Extent of the Kings Revenewes, shall have likewise in charge to examine the state of the said pasture landes and rentes, and upon their certificate order shall be taken accordingly.

Ffurthermore, where it is desired that the auncient use and authoritie of assembling the three States of the Island for ordering the principale affaires thereof may be reestablished: This request seemeth reasonable, and accordinge to the auncient Custome of the said Isle thought meete to be graunted.

To their demand, that the sallerie of congers may be duly practized according to the first institution thereof: It is answered, that the resolucon hereof is to be referred to the Book of Extent made Anno quinto. Edward 3, whereupon the L.L.s of the Counsell did determine this question in the year 1583.

Whereas also it is desired that they may not be barred of their Jurisdiction against offenders though they be within the Castle, according to their Custome: It is answered that, whensoever any person or persons belonging to the Governor shall happen to offend against the course of justice of the Isle, either civile or criminall, in case the partie dwell without the precinct of the Castle, the Bailiffe & Juratts shall look to the due execution of justice upon him according to the qualitie of the fault; but, if any such person or persons so offending shall reside or dwell within the Castle and under the charge of the Governor, then are the Bailiffe and Juratts to demand the offender at his handes upon the laying open & unfolding of the cause, &c.; if the Governor denye to deliver up the partie to his ordinarie tryall according to the custome of the Isle, the Islanders have their recourse to the Counsell Boord for remedie. Wherein nevertheles this consideracon is meet to be had, that, upon every such controversie happening between the Governor and the foresaid officers, ffortie daies respite be interposed for conference betwixt them, in hope of agreement at home before the complaint be made unto the L.L.s of the Counsell.

Lastlie, whereas it is desired that some convenient course may be sett downe for prevention & remedie of the intollerable charge & trouble in the prosecution of Appeales: ffor answere heereunto the best remedy that can be yealded for the present is that it be ordered, & so it is ordered by the Lordes, That from hencefoorth no Inhabitant of the said Island shall bring any Appeale hither concerning unmoveables, that is concerning the question of landes, under the value of ffortie shillings sterlinge of yearlie rent nor concerning moveables, that is in goods & chattells, under the value of ffortie pounds sterling.

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|---|---|---|---|---|
| T. Ellesmere, *Canc.* | T. Dorsyt. | Lenox. | Suffolke. | Stanhope. |
| Northumberland. | Worcester. | Devonshyre. | Northamton. | HBruce. |
| Salisbury. | Exeter. | W Knollys. | E. Wotton. | |
| E. Zouche. | Ffortescue. | J. Popham. | J. Herbert. | |

Chas. Lefebvrre, *Greffier de la Reine.*

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Order in Chefs Plaids as to the election of Constables, 5th Oct., 1778.

Aux Chefs Plaids d'après la S^t^. Michel, tenus le 5^e^. October, 1778, devant William Le Marchant Ec^r^. Baillif; présents Jean De La Mare, Charles Andros, Nicolas Reserson, Pierre De Jersey, Elizée Tupper, Jean Carey, Thomas Dobrée, James Hubert, Pierre Falla, Jean Guille, et Eléazar Le Marchant, Ec^rs^. Jurés.

La Cour, en faisant droit sur la requête des Paroisses de S^t^. Sampson, du Valle, du Câtel, de S^t^. Pierre du Bois, de Torteval, et de S^t^. André, et, sur ce, eu le rapport des Paroisses de la Ville, de S^t^. Sauveur, de la Forest et de S^t^. Martin, pour borner le temps que les Connétables des Paroisses de cette Isle serviront la dite charge: La Cour, après avoir sur ce aussi entendu les Connétables de toutes les dites Paroisses sur leur droits respectifs, aux fins d'acte de cette Cour du 27^e^ Avril dernier, Ouie la conclusion des officiers du Roi, a ordonné que les dits Connétables de cette Isle respectivement seront tenus de mettre des affiches pour faire élire d'autres Connétables à leur place, après an & jour de leur sermentement à la dite charge, la dite charge étant annale, toutefois & quantes qu'ils en seront requis par aucune délibération de leur dite Paroisse. Et ne pourra néanmoins aucune des dites Paroisses continuer leurs Connétables à la dite charge plus de trois ans, sans qu'il y ait une nouvelle Election, pour laquelle faire seront les Connétables respectivement tenus de mettre des affiches pour une nouvelle Election après trois ans qu'ils auront geré la dite charge.

GUERNSEY.

Population Returns.

POPULATION of the Bailiwick of Guernsey, consisting of the Islands of Guernsey, Alderney, Sark, Herm, Jethou and Caskets, according to the returns taken on the 7th June, 1841.

| Parishes. | Houses Inhabited. | Houses Uninhabited. | Houses Building. | Males. | Females. | Total. |
|---|---|---|---|---|---|---|
| St. Peter Port | 2123 | 126 | 16 | 6105 | 8451 | 14,556 |
| St. Sampson | 264 | 3 | 5 | 779 | 788 | 1567 |
| Vale | 279 | 9 | 1 | 857 | 841 | 1698 |
| Câtel | 337 | 12 | 3 | 903 | 991 | 1894 |
| St. Saviour | 214 | 23 | 2 | 494 | 540 | 1034 |
| Torteval | 73 | 4 | .. | 207 | 180 | 387 |
| St. Peter du Bois | 224 | 20 | .. | 556 | 624 | 1180 |
| The Forest | 129 | 1 | 1 | 341 | 355 | 696 |
| St. Martin | 319 | 11 | 1 | 829 | 996 | 1825 |
| St. Andrews | 191 | 2 | .. | 468 | 553 | 1021 |
| Town Hospital | .. | .. | .. | 132 | 140 | 272 |
| Câtel ditto | .. | .. | .. | 73 | 71 | 144 |
| Common Gaol | .. | .. | .. | 11 | 4 | 15 |
| Fort George, including 8th Depot and Royal Artillery | .. | .. | .. | 271 | 146 | 417 |
| Total of Guernsey | 4153 | 211 | 29 | 12,026 | 14,680 | 26,706 |
| Alderney | 225 | 31 | .. | 500 | 530 | 1030 |
| Caskets | 2 | .. | .. | 3 | 5 | 8 |
| Sark and Le Marchant Island | 130 | .. | .. | 394 | 396 | 790 |
| Herm | 7 | .. | .. | 22 | 16 | 38 |
| Jethou | 1 | 2 | .. | 3 | 3 | 6 |
| Total of Bailiwick | 4518 | 244 | 29 | 12,948 | 15,630 | 28,578 |

*Court House, Guernsey, the* 22*nd of June*, 1841.

(Signed) DANIEL DE LISLE BROCK, *Bailiff of Guernsey.*

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Letter from J. W. Gosselin, Esq., Jurat.

*Springfield,*
*Guernsey, 5th October*, 1846.

SIRS,

MAY I request you will have the goodness to take the following proposal into your kind consideration?

I was elected to the situation of Jurat, in 1832, against my will. Finding the office irksome, in 1838, I petitioned Her Majesty in Council for leave to resign; my petition was transmitted to the States of this Island for their consideration; and they rejected my application. I have now acted, nearly fifteen years, as Jurat of the Royal Court; and, having been elected for life, I have no prospect of being allowed to retire: but, as the Douzeniers and the officers of the Militia are permitted to resign their respective situations at the age of sixty, I would ask, as an act of justice to the Jurats, that they likewise, at the age of sixty, may be permitted to vacate their office, or not, according as they may feel disposed.

I have, &c.,

J. W. GOSSELIN, *Jurat.*

*T. F. Ellis, Esq.*
*T. Bros, Esq.*
*Royal Commissioners.*

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Letter from Henry Tupper, Esq., Advocate.

*Guernsey, September* 30, 1846.

GENTLEMEN,

I BEG leave to direct your attention to the defects existing in the mode of proceeding in mixed civil and criminal cases, termed "causes en adjonction," and particularly as illustrated by the case of "Sir William Collings *v.* Major General W. P. Napier:" and, in order to facilitate your inquiry, I inclose the *Star* newspaper of the 3rd and 10th of March, 1845, containing reports of these proceedings before the Royal Court.

I beg leave also to draw your attention;

1st. To the Order in Council of the 6th of July, 1809, and to the Act of Court (jugement) of the 13th of November, 1821, copies of which are enclosed.

2nd. To the Precept of Assise or Charter of 1331, which distinctly declares that the Royal Court has cognizance of all cases occurring in the Island.

3rd. To the said Charter of 1331, which states that no man shall be compelled to plead out of the Island.

Consequently, the conduct of the Crown lawyers, in this case, was a dereliction of duty: and the Act of Court, referring the case to Council and compelling the plaintiff to plead out of the Island, not on appeal, but in order to obtain machinery to prosecute his case, was a violation of the constitution, which even the unconstitutional and highly improper interference of the Secretary of State cannot excuse.

I shall further add that Sir William Collings, not desiring damages, originally presented a petition to Her Most Excellent Majesty in Council, praying for redress, and in the hope that General Napier would have been instructed to withdraw his offensive letter; and then the matter would there have rested; but that the Lord President of Council, the late Lord Wharncliffe,

GUERNSEY.

returned the petition to me, as acting for Sir William Collings, intimating that Council was not in a position to hear evidence or even entertain the case judicially, and consequently that proceedings must be entered in the Court below, where alone witnesses could be compelled to attend.

These proceedings were entered in the Court below; and the result is before you. Had they been prosecuted, several years must have elapsed, and General Napier might have been at the Antipodes before their termination, if they even could have been terminated at all, considering the turn they had been made to take: therefore, in the face of a prospective and positive denial of justice, the proceedings were abandoned.

I, therefore, earnestly request that you will be pleased,

1st. To consider the defects in the proceedings "En adjonction."

2nd. To define the mode of proceeding and the authority of the Royal Court, when the person holding the office of Lieutenant Governor does an injury or commits a misdemeanor or a crime, under the cloak of his official station or otherwise, as a private individual.

I conceive that there can be no wrong without a remedy, and that no man is above the law. The Crown lawyers appear to make an exception in favour of the Lieutenant Governor. I know and feel that they are wrong; and, although it is to be hoped that Lieutenant Governors will hereafter conduct themselves with discretion, still it may be otherwise, and, therefore, the solution of these questions would be highly desirable.

Should you desire any further elucidation of these points, I shall be most happy to afford them.

I have the honour, &c.,

HENRY TUPPER, *Advocate.*

*To the Royal Commissioners for Inquiry into the Criminal Law of the Channel Islands, &c., &c., &c.*

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Letter from the Constables and Douzeniers of certain parishes against the introduction of trial by Jury.

SIR,

THE question of introducing trial by jury in this Island having been raised by the Royal Commissioners, Messrs. Ellis and Bros, during the course of their late inquiry in the Criminal Law, we have the honour to inform you that the inhabitants whom we represent, feeling deeply the importance of the subject, have met in their respective parishes, and have unanimously adopted resolutions against such a change in our constitution.

Their sentiments concurring entirely with the opinions already expressed both by the Bench and by the Bar.

The inhabitants consider the small extent of the Island and its consequent state of society; they consider that the Royal Court insures to all Judges of their own choice selected from among the most upright, well informed and independent members of the community, who of themselves constitute a real jury, the members of which have, by long experience, acquired such legal knowledge as an ordinary jury cannot be expected to possess.

They further consider that the introduction of trial by jury would not insure to the inhabitants more guarantees of liberty or justice than they now have, but, on the contrary, that a new social duty would be imposed on them without apparent public advantage, and is, therefore, not only unnecessary, but would be productive of evil.

These, Sir, are the sentiments which we have been authorized, and now have the honour of communicating on behalf of the inhabitants: and, feeling convinced that Her Majesty's Government, in contemplating changes in the laws and institutions of the Island, has only in view the welfare and happiness of the community, we may be permitted to express the readiness of the inhabitants to cooperate cordially in furtherance of so desirable an object. At the same time considering that our position, habits, laws and institutions differ materially from those of England, we hope that, previous to any final decision, the authorities and the inhabitants will be allowed an opportunity of offering such remarks or suggestions as their local knowledge, their wants and their feelings may prompt.

We have taken the liberty of transmitting a copy of this letter to the Royal Commissioners.

On behalf of the several parishes we respectively represent,

We have the honour, &c.,

PETER LE LIÈVRE, Jun., } Constables,
FREDK. MANSELL, Jun., } St. Peter Port.
THOMAS GOULD, Connétable of St. Sampson.
JOHN HOCART, Douzenier, Vale.
ABRAHAM BLONDEL, Douzenier, Câtel.
ST. JOHN MANSELL, Constable, }
THOMAS LAINÉ, } Douzeniers, } St. Saviour.
ABRAHAM SIMON, }
JOHN LE MESSURIER, } Douzeniers,
JAMES LOSTEVIN, } St. Pierre du Bois.
THOS. LE MESSURIER, Douzenier, Torteval.
HELLIER ALLEZ, Constable, Forest,
JEAN LE MOTTÉE, Douzenier de St. Martin.

*The Right Hon. Sir George Grey, Bart., &c. &c. &c.*

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GUERNSEY.

*Guernsey, December* 2, 1846.

GENTLEMEN,

Letter from the Constables of St. Peter Port.

WE have the honour to transmit to you, on behalf of the inhabitants of this Island, a copy of the letter which we have been instructed and authorized to address to the Secretary of State for the Home Department, expressive of the sentiments of the Island relative to the introduction of trial by jury.

We have the honour, &c.,

PETER LE LIÈVRE, *Jun.*,
FRED. MANSELL, *Jun.*, } Constables, St. Peter Port.

*The Royal Commissioners for Inquiry into the Criminal Law of the Channel Islands.*

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BILLET D'ETAT.

Extracts from Billet d'Etat of Jan. 21, 1847.

Comité pour considérer les Changemens qui sont nécessaires dans les Lois Civiles et dans leur Administration.

MONSIEUR, *Guernesey*, 24 *Novembre*, 1846.

Nous soussignés, autorisés et au nom de nos Douzaines respectives, vous prions de vouloir bien convoquer les Etats de cette Ile, sous le plus court délai, afin de leur soumettre,

Si en conséquence de la lettre de Messire George Grey, Secrétaire d'Etat, en date du 10 Septembre écoulé, exprimant que le Gouvernement de Sa Majesté accueillera toutes suggestions qui lui seront soumises par les Etats comme le résultat de leur délibérations en ce qui a rapport aux changemens qui leur paraîtraient nécessaires dans les lois civiles de l'Ile et dans leur administration,

Ils sont d'avis de nommer un Comité pour prendre le sujet précité en considération et dresser un projet de réforme pour en faire son rapport aux Etats, dans le plus court délai, et ensuite être soumis à Sa Majesté en Conseil pour son approbation et confirmation.

Nous avons l'honneur d'être, Monsieur,

Vos très-obéissans serviteurs,

PIERRE LE LIÉVRE, Connétable, Saint Pierre-Port.
THOMAS CLUGAS, Jun. Canton No. 1.
JEAN-PIERRE MARTEL, Canton No. 4.
THOMAS GOULD, Connétable de Saint Sampson.
THOMAS MAHY, Connétable du Câtel.
SAINT-JEAN MANSELL, Connétable de St. Sauveur.
FRANCOIS JEHAN, Connétable de Torteval.
THOMAS LE POIDEVIN, Connétable du Valle,
HELIER ALLEZ, Connétable de la Forêt.
JEAN LE MOTTÉE, Douzenier de Saint Martin.
JEAN BROUARD, Jun. Connétable de Saint André.

H. O. CARRÉ, Ecuyer, Lieutenant Baillif et Président des Etats, &c. &c.

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MESSIEURS, *Cour Royale*, 3 *Décembre*, 1846.

J'ai l'honneur d'accuser réception de votre lettre, en date du 24 Novembre dernier, qui m'est parvenue aujourd'hui seulement, par laquelle vous me priez, au nom de vos Douzaines respectives, de convoquer les Etats de cette Ile dans le plus court délai, afin de leur soumettre la proposition et nommer un Comité pour prendre en considération les changemens qui leur paraîtront nécessaires dans les lois civiles de l'Ile et dans leur administration, et dresser un projet de réforme pour être soumis aux Etats, et ensuite à Sa Majesté en Conseil.

Comme j'attends, d'un jour à l'autre, le retour de M. le Baillif, je crois ne pas devoir prendre sur moi de convoquer les Etats pour délibérer sur un sujet d'une importance si majeure. Je ne manquerai pas, dès son arrivée, de lui communiquer le contenu de votre lettre, afin qu'il prenne, en conséquence, les mesures convenables.

J'ai l'honneur, &c.,

H.-O. CARRÉ, Lieutenant Baillif.

MM. PIERRE LE LIÈVRE, &c.

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*No.* 2, *Douzaine Cantonale du Nord-Ouest*,
*Guernesey, ce* 7 *Décembre*, 1846.

MONSIEUR,

J'ai l'honneur de vous addresser une résolution passée à la séance de notre Douzaine, tenue ce jour.

Je suis, Monsieur,

Votre très-humble serviteur,

ABRAHAM BISHOP, Président.

A PIERRE S. CAREY, Ec., Baillif de Guernesey,
Président des Etats, &c. &c. &c.

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*A la séance de la Douzaine Cantonale du Nord-Ouest, No.* 2, *tenu le* 7 *Décembre*, 1846.

Il a été résolu que cette Douzaine se joindra à la Douzaine Centrale, en priant Monsieur le Président des Etats de convoquer ce corps au plutôt, afin de nommer un Comité autorisé à

dresser un projet de réforme dans notre Constitution et dans nos Lois Civiles, lequel Comité sera aussi autorisé à appeller à son aide, soit Membres du Barreau ou autres individus capables de donner l'information requise, afin qu'il en fasse son rapport aux Etats dans le plus court délai.

---

MONSIEUR, *Cour Royale, 11 Décembre,* 1846.

J'ai l'honneur d'accuser réception de la résolution de votre Douzaine, que vous m'avez addressée, dans votre lettre en date du 7 Décembre, et de vous informer que j'ai l'intention de soumettre aux Etats la proposition contenue dans la requête qui a été dernièrement présentée à M. le Lieutenant-Baillif.

J'ai l'honneur, &c.

PIERRE STAFFORD CAREY,

A. BISHOP, Ecuyer. Baillif de Guernesey.

Cette réquisition ayant été faite en conséquence des expressions dont M. le Secrétaire d'Etat s'est servi dans sa lettre en date du 10 Septembre, 1846, il me paraît qu'afin de bien saisir la position dans laquelle les Etats se trouvent aujourd'hui, il sera à propos de reproduire la lettre dont il s'agit.

---

SIR, *Whitehall, September* 10, 1846.

I have the honour to acknowledge the receipt of the representation which you were authorized by the States of the island of Guernsey to communicate to me with reference to the proposed inquiry into the Civil Laws of the island.

Her Majesty's Government will not fail to give the fullest consideration to the opinions expressed by the States in their resolutions, which you have placed in my hands, and to the assurance of their attachment to their native language and to the laws and institutions of the island.

It is far from the intention of Her Majesty's Government to adopt any measures tending to affect important changes, without proof of their necessity, in these laws and institutions.

At the same time, there is reason to believe that the laws of the Channel Islands, like the laws of other parts of Her Majesty's dominions, may, from lapse of time and other circumstances, require revision and amendment, and, with this view and in conformity with the course of proceeding adopted in other cases, a Commission has been appointed for inquiring into the criminal laws of those islands.

With the same view and in accordance with various representations to that effect from many of the inhabitants, Her Majesty's Government have announced their intention humbly to advise Her Majesty to direct that an inquiry should be instituted into the civil law of these islands; but they have thought it expedient that such inquiry should not proceed simultaneously with the inquiry now in progress into the criminal law.

In the mean time, Her Majesty's Government will receive with satisfaction any suggestions which may be offered by the States, as the result of their deliberation with regard to amendments, which may appear to them to be required, in the laws of the island or in the administration of them.

I have the honour, &c.,

THE BAILIFF of GUERNSEY (Signed) G. GREY.

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SIR, *Taunton, 16th September,* 1846.

I have the honour to acknowledge the receipt of your letter of the 10th instant, on the subject of the representation which I was authorized to make to you, on the part of the States of the Island of Guernsey, with reference to the proposed inquiry into the civil law of the Island.

On my return to Guernsey, I shall take the earliest opportunity of communicating your letter to the States. In the meanwhile, I beg most respectfully to thank you, in their behalf, for the exposition you have given of the views and intentions of Her Majesty's Government.

In Guernsey, as elsewhere, there is no doubt room for revision and amendment. And, however attached the inhabitants of the Island may be to their ancient laws and institutions yet, I am persuaded that, where a change is proved to be necessary, the States will be nowise disposed to object to it. At the same time, I am quite sure that the States will rejoice to find that any inquiry, which it may ultimately be thought advisable to make into the civil laws of the island, is not intended to be proceeded with simultaneously with the inquiry now going on into the criminal law. And I may add that, in this feeling, I entirely concur.

For, when the mode of proceeding in criminal matters has once been revised and amended, it is to be hoped that this branch of the law will stand on such a footing as to serve as a model for any amendment that may be required in other branches of the law.

In this manner, I look forward to the introduction of very considerable improvement in the civil laws, independently of any commission of inquiry.

I am confident that the Royal Court will be prepared to frame important measures of amendment, which, on being ratified and approved by the States, will ultimately be presented for the sanction of Her Majesty in Council.

In the meanwhile, with respect to any further amendments in the laws of the Island or in the administration thereof, the States cannot fail to be highly gratified at the assurance, conveyed to them in your letter, of the readiness of Her Majesty's Government to receive any suggestions which they may offer as the result of their deliberation.

I have the honour, &c.,

(Signed) PETER STAFFORD CAREY.

SIR GEORGE GREY, Bart., Whitehall, Bailiff of Guernsey.

GUERNSEY.

Le Gouvernement de Sa Majesté ayant l'intention de recommander à Sa Majesté d'envoyer des Commissaires Royaux pour faire une enquête au sujet des lois civiles de cette Ile, M. le Secrétaire d'Etat nous assure que le Gouvernement sera prêt à accueiller les suggestions qui lui seront soumises par les Etats. En suivant le cours désigné par Messire George Grey, les Etats démontreront, de la manière la plus formelle, combien ils sont empressés à seconder les vues du Gouvernement.

---

Resolution of the States assembled 29 Janv[r] 1847.

Sur le septième Article du dit Billet. Qu'en conséquence de la lettre de Messire George Grey, Secrétaire d'Etat, en date du 10[me] Septem[re] écoulé, exprimant que le Gouvernement de Sa Majesté accueillera toutes suggestions qui lui seront soumises par les Etâts, comme le résulat de leurs déliberations en ce qui a rapport aux changements qui leur paraîtraient nécessaires dans les lois civiles et dans leur administrations.

" Ils sont d'avis qu'un Comité soit nommé, qui consistera d'un membre choisi par chaque Douzaine, pour prendre le sujet précité en considération et dresser un projet de réforme, pour en faire son rapport aux Etâts dans la plus court délai, et ensuite être soumis à Sa Majesté en Conseil pour son approbation et confirmation.

---

Letter from His Excellency General Napier.

SIR, *Guernsey, August 9th,* 1847.

I HAVE the honour to request you will lay before the " Commission of Inquiry into the state of the Criminal Law in the Channel Islands," the following minute of a general meeting of Delegates (held 23rd June, 1847) from *all* the Douzaines of the Island, held under a resolution of the States.

" Séance du 23[me] Juin, 1847.—THOMAS CLUGAS, *Président.*

Le Comité a décidé, 9 voix contre 1 (Le député de St. Pierre du Bois), que la délibération suivante formera part de son rapport aux Etats.

Le Comité est d'avis que les Etats doivent être reconnus comme le seul corps législatif et que la Cour Royale doit être limitée à l'administration de la loi."

I have, &c.,
W. C. NAPIER,
*Lieutenant Governor.*

*Charles Clark, Esq.,*
*Secretary to the Commission,*
*&c. &c. &c.*

---

Extract des délibérations du Comité des Etats pour la Réforme des Lois Civiles.
Séance du 23[me] Juin, 1847.

" Présens: THOS. CLUGAS, J[r]., *Président.*—Canton N°. 1, S[t]. P. P.
S. MARTIN, Canton N°. 4. *id.*
A. PLAINPIED, S[t]. Sampson.
J. HOCART, Valle.
A. MOULLIN, Câtel.
A. DUMARESQ, S[t]. Sauveur.
J. Le MESSURIER, S[t]. Pierre du Bois.
J. GUILLE, Forêt.
J. Le MOTTÉE, S[t]. Martin.
J. GAVEY, S[t]. André.

Le député de S[t]. P. du Bois vota contre la proposition, que " Le Comité est d'avis que les Etats doivent être reconnus comme le seul corps législatif, et que la Cour Royale doit être limitée à l'administration de la loi."

---

Letter from J. Gaudion, Esq., Judge of Alderney.

SIR, *Alderney, 18th January,* 1847.

I HAVE the honour to state to you, for the information of the Commissioners on the Criminal Law of the Channel Islands, that, of late, a serious change in the increase of the population of this island is felt from the influx of workmen coming daily here to carry on Government works; principally a breakwater for a harbour of refuge. This work alone, the contractor tells me, will employ at least five hundred men; these, with the usual proportion of married men and their children, will more than double our population.

With our stationary and correct natives, it was a matter of no consequence what powers this Court possessed in a criminal point of view; but I fear that we may expect a different state of things with the new comers. I have therefore thought it my duty to state thus far, previous to the Commissioners coming to a decision on the powers they may please to recommend the Court of this Island should have.

I have, &c.,
JOHN GAUDION,
*Judge of Alderney.*

*Charles Clark, Esq.,*
*Secretary to the Commission,*
*&c. &c. &c.*

GUERNSEY.

On the Patent Roll 5 Edw. III.

On the PATENT ROLL, 5 Edw. 3, (p. 1, m. 33 dorso.) preserved in the TOWER of LONDON.

De inquirendo super vero valore Insularum de Gernereye, &c.

Rex dilectis et fidelibus suis Roberto de Norton et Guillielmo de la Rue Salutem. Sciatis quod nos, de fidelitate vestra et circumspectione confidentes, assignavimus vos ad supervidendum statum Insularum nostrarum de Guernereye, Jerseye, Serk, & Aureneye, ac castrorum nostrorum in eisdem Insulis, et ad informandum vos per inquisitiones, per sacramentum proborum, &c., dictarum Insularum capiendas, ac aliis viis et modis quibus expedire videritis, super vero valore Insularum eorundem, ut in redditibus, proficuis exitibus, proventibus, et aliis emolumentis quibuscumque ad nos pertinentibus, tam in mari quam in terra; et etiam de statu quo castra, molendina, et domus nostra in eisdem Insulis fuerunt tempore quo dilectus et fidelis noster Johannes de Roches, nuper custos Insularum earundem, la Petro Bernard de Pynsoles et Laurencio de Gaillars, nunc custodibus Insularum prædictorum, liberavit, et quantum præfatus Johannes, in reparatione et emendatione defectuum castrorum, molendinorum, et domorum nostrorum ibidem, dum custos earundem Insularum extitit, posuit, et qualiter, et quo modo; necnon de numero hominum ad arma, et peditum, ac constabulatiorum, et aliorum, quos præfatus Johannes in castris nostris de Cornet et de Gouronik in eisdem Insulis retinuit, tempore quo custodiam earundem sic habuit, et per quantum tempus, et ad quæ vadia, et si ipsum hujusmodi homines ibidem necessario oportuit retinere; ac etiam si Otto de Grandisono, dudum custos Insularum prædictarum, qui defectus prædictos sumptibus suis propriis reparasse debuerat, aliqua bona seu catalla in eisdem Insulis habuit, die quo obiit, de quibus iidem defectus reparari potuerunt, necne, et si sic, tunc quæ et cujusmodi bona et catalla, et ubi, et cujus pretu, et ad quorum manus eadem bona et catalla postmodum devenerunt, et qui et cujusmodi defectus in castris, molendinis, et domibus prædictis, tempore obitus prædicti Ottonis fuerunt, et qualiter, et quo modo; necnon ad informandum vos, per hujusmodi inquisitiones capiendas, de omnibus et singulis articulis contentis in quodam rotulo, quem vobis mittimus sub pede sigilli nostri, et aliis eosdem articulos contingentibus. Et ideo vobis mandamus quod, ad certos dies et loca quos ad hoc provideritis, inquisitiones prædictas, ac omnia alia præmissa, in forma prædicta faciatis, et easdem inquisitiones, una cum informatione prædicta, nobis sub sigillis vestris distincte et aperte mittatis, et hoc breve. Damus autem Custodibus dictarum Insularum, ac omnibus aliis ballivis et ministris nostris in eisdem Insulis, tenore præsentium in mandatis, quòd ad certos dies et loca, quos eis scire faciatis, venire faciant coram vobis omnes et singulos dictarum Insularum, quos præmissa contingunt, necnon tot et tales probos, &c., de eisdem Insulis, per quos, &c., in præmissis, &c., et inquiri, vobisque super hiis pareant et intendant. In cujus &c Teste Rege apud Wyndesore Septimo decimo die Februarii.

per concilium.

Et mandatum est custodibus Insularum de Guernereye, Jerseye, Serk, et Aureneye, ac omnibus aliis ballivis et ministris Regis in eisdem Insulis, quod ad certos dies et loca, quos præfati Robertus et Guillielmus eis scire faciant, venire faciant coram eis omnes et singulos dictarum Insularum, quos præmissa contingunt, necnon tot, &c., de eisdem Insulis, per quos, &c., in præmissis, &c., et inquiri: Et quod eis super hiis pareant et intendant. Teste ut supra.

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On the same Patent Roll 5. Edw. 3. (p. 1. m. 1. dorso.)

De certificando Regem super valore Insularum de Gernereye, &c.

Rex dilectis et fidelibus suis Roberto de Norton et Petro de Hoo Salutem. Cum nuper assignaverimus vos, præfate Roberte, et dilectum nobis Willielmum de la Rue ad supervidendum statum Insularum nostrarum de Gernereye, Jereseie, Serk, et Aureneye, ac castrorum nostrorum in eisdem insulis, et ad informandum vos, præfate Roberte, et dictum Willielmum, per inquisitiones, per sacramentum proborum et legalium hominum Insularum prædictarum capiendas, ac aliis viis et modis quibus expedire videritis super vero, valore Insularum earundem, ut in redditibus, proficuiis, exitibus, proventibus, et aliis emolumentis quibuscumque ad nos pertinentibus, tam in mari quam in terra; et etiam de statu quo castra, molendina, et domus nostra in eisdem Insulis fuerunt tempore quo dilectus et fidelis noster Johannes de Roches, nuper custos Insularum earundem, ea Petro Bernard de Pynsoles et Laurencio de Gaillars, nunc custodibus Insularum prædictarum, liberavit, et quantum præfatus Johannis in reparatione et emendatione defectuum castrorum, molendinorum, et domorum nostrorum ibidem, dum custos earundem Insularum extitit, posuit, et qualiter, et quo modo; necnon de numero hominum ad arma, et peditum, ac constabulariorum, et aliorum, quos prœfatus Johannes in castris nostris de Cornet et Gouronik in eisdem Insulis retinuit, tempore quo custodiam earundem sic habuit, et per quantum tempus, et ad quæ vadia, et si ipsum hujusmodi homines ibidem necessario oportuit retinere; et etiam si Otto de Grandissono dudum custos Insularum prædictarum, qui defectus prædictos sumptubus suis propriis reparasse debuerat, aliqua bona seu catalla in eisdem Insulis habuit, die quo obiit, de quibus iidem defectus reparari potuerunt, necne, et si sic, tunc quæ et cujusmodi bona et catalla, et ubi, et cujus pretii, et ad quoram manus eadem bona et catalla postmodum devenerunt, et qui et cujusmodi defectus in castris, molendinis, et domibus prædictis, tempore prædicti Ottonis fuerunt, et qualiter, et quo modo; necnon ad informandum vos, præfate Roberte, et dictum Willielmum, per hujusmodi inquisitiones capiendas, de omnibus et singulis articulis contentis in quodam rotulo, quem vobis, præfate Roberte, et dicto Willielmo, misimus sub pede Sigilli nostri, et aliis eodem articulos contingentibus: ac vos, præfate Roberte, et dictus Willielmus, quasdam Inquisitiones super præmissis capi feceritis virtute mandati nostri supradicti, et quædam Inquisitiones de aliquibus præmissorum adhuc factæ non existunt, prætextu cujusdam brevis nostri, vobis, præfate Roberte, et prædicto Willielmo directi, de supersedendo executioni assignationis supradictæ. Nos, quibusdam certis de causis certiorari volentes super vero valore Insularum prædictarum, quæ per vos, præfate Roberte, et dictum

GUERNSEY.

On the Patent Roll 5 Edw. III.

Willielmum alias extensæ non fuerunt, necnon de omnibus aliis supradictis, ac de fidelitate vestra confidentes, assignavimus vos ad supervidendum statum Insularum, quæ alias extensæ non fuerunt, ut est dictum, et ad informandum vos, per inquisitiones per sacramentum proborum et legalium hominum Insularum prædictarum capiendas, ac aliis viis et modis quibus expedire videritis, de præmissis omnibus et singulis, et ea tangentibus, in forma prædicta. Et ideo vobis mandamus quòd ad certos dies et loca, quos ad hoc provideritis, inquisitiones prædictas, ac omnia alia præmissa, faciatis, sicut prædictum est, dicto mandato nostro de supersedendo, vobis, præfate Roberte, et dicto Willielmo inde directo, non obstante; et easdem Inquisitiones, una cum informatione vestra, nobis sub sigillis vestris mittatis, et hoc breve. Damus autem custodibus dictarum Insularum, ac omnibus aliis ballivis et ministris nostris in eisdem Insulis, tenore presentium, in mandatis, quòd ad certos dies et loca, quos eis scire faciatis, venire faciant coram vobis omnes et singulos dictarum Insularum, quos præmissa contingunt, necnon tot et tales probos et legales homines de Insulis prædictis, per quos rei veritas in præmissis melius sciri poterit et inquiri, vobisque super hiis pareant et intendant. In cujus &c. Teste Rege apud Gaywode, xxviii. die Junii.

per ipsum Regem.

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